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ABSTRACT

At the present time, there is a great need for legal services that are more available to people when and where they need them and at lower cost. The poor do not receive the legal services they need, and even with Federally funded legal services programs, probably not over 20 percent of their needs are being met. Unfortunately, the lower middle class may fare even worse than the poor now that many of the poor can use legal aid, and many parties to small controversies do not use the legal process because attorneys' fees would exceed the amount in controversy. "Sublegal" and "paralegal" personnel could be used by lawyers to aid in speeding up the legal process without any loss of quality in services rendered. The report is divided in five sections: Introduction, Reactions of the Bar to Competition, Unfilled Legal Needs and Trends in Future Demand, Some Proposed Reforms in the Structure of the Legal Profession, and Meeting Legal Needs. Materials on contexts of legal services, selected licensing statutes, and information on what lawyers do are appended. (Author/BC)

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New Careers in Law: Meeting Present and Prospective Legal Needs. Robert B. Yegge, Project Director, Dean, University of Denver College of Law; Wilbert E. Moore, Sociologist, Russell Sage Foundation; Howard K. Holme, Research Associate, Administration of Justice Program, University of Denver College of Law. A Report of the Administration of Justice Program, University of Denver College of Law, 200 W. 14th Avenue, Denver, Colorado 80204.

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RESEARCH BRIEF

Despite various efforts of lawyers in the United States to expand legal services there is a great, unmet need for legal services that are more available to people where and when they need them, and at lower cost. We have known for some time that the poor do not receive the legal services they need, and even with federally funded legal services programs, probably not over 20% of the needs of the poor are being met. Unfortunately, the lower-middle class may fare even worse than the poor now that many of the poor can use legal aid, and many parties to small controversies do not use the legal process because attorneys' fees would exceed the amount in controversy.

Thus we conclude that there is a need for legal help that is not being met. There is, however, no great need for high-priced but organizationally inefficient legal help. Lawyers charge as much as they do partly because they insist on custom tailoring legal jobs which could be mass produced. Efficient, low cost service is needed – and a number of areas of law are now almost completely pre-empted from lawyers by businesses which have recognized this, and which employ lower-paid, less-skilled workers to perform standard and routinized legal functions.

This need for low-cost services can be filled by a combination of reforms. Specialization of attorneys has already occurred, but without the special training and regulation that are needed. Full acceptance of group legal services and prepaid legal insurance plans is badly needed. If these reforms were made, it would be easier to use non-lawyers for the less difficult legal tasks.

The use of "sublegal" and "paralegal" personnel is the major theme of this report. It fits well into other major reforms of the legal profession, but can be adopted concurrently with – or even before – other reforms. Lawyers should use investigators to gather facts, interviewers to listen patiently and gather documents and records, and researchers to gather cases and materials on points of law. At the same time, lawyers and law schools should recognize that social workers, accountants, and insurance and real estate salesmen need legal knowledge, and should participate in the training of these auxiliary occupations.

IMPLICATIONS FOR ACTION

* No social or economic group in our society is getting sufficient, inexpensive legal services. Despite a tremendous growth in legal aid in the last five years, the poor are probably receiving less than 20% of the legal help they need. Furthermore, our admittedly inadequate data on the legal needs of the lower-middle class indicate that these individuals may well be in as great a need of additional legal services as the poor. More study is needed. Even the wealthy (and corporations) are paying lawyers to do routine work that could be done by competent, specialized non-lawyers working under the supervision of lawyers.

* "Paralegal" and "sublegal" occupations need to be developed and upgraded. We define *"sublegal"* as one who *works under the supervision of a lawyer, usually in a law office.* The *"paralegal" is not a lawyer, nor under the direct supervision of a lawyer, but needs some legal knowledge to do his job properly.* Development of totally new jobs is not enough; present jobs must be upgraded with additional training and rewards.

* A host of particular legal tasks need to be analyzed with the goal of developing subprofessional, specialized occupations to perform each particular operation competently and quickly. Law schools, private law firms, and legal aid programs should all work in this area. As new careers are developed, law schools and attorneys should help develop curricula and training programs to provide institutional education in the common elements of the jobs. Some of these programs need last only a few weeks – others may require a year or two. Community colleges may be peculiarly well suited to provide this variety and type of education, once the programs are developed. On-the-job training is also necessary.

* Law schools should help in the development and training of sublegal and paralegal occupations, but should also help in the necessary retraining of lawyers. Some of that retraining should involve techniques of managing responsible non-lawyer subordinates. For some lawyers it will also involve broadening their area of competence as well as helping them to supervise sublegals who take over the tasks they formerly did.

* The development of sublegal occupations must be attended by ethical restraints designed to protect the client. Either licensing and effective disciplinary procedures must be developed, or lawyers must be held responsible for the supervision and disciplining of sublegals.

* The "common rights of citizenship" with respect to law and government are increasing in number and expanding in scope. As our concept of justice broadens from protecting the criminally accused and providing some help to the indigent, the need for legal services grows.

* All levels of government have been given the duty of administering parts of the "justice package" – so the development of paralegal government

occupations and paralegals who can represent those negotiating for goods or services from the government is especially vital.

* No one solution or reform is sufficient. Sublegal personnel may be sooner and better used if other reforms, including modification of legal aid income limits, group legal services, prepaid legal insurance, and regulated attorney specialization are adopted. These other reforms deserve wide support, which they need to overcome resistance by many lawyers, and some segments of bar associations. Demonstration of economic demand for lower-cost services is probably the most convincing form of evidence.

FINDINGS

* Legal knowledge and the making of legal decisions are not and cannot be activities limited to lawyers in our complex society. The ordinary adult must make many decisions with legal ramifications, from opening a bank account to filing a tax return to buying a car on an installment plan. Neither can lawyers make all legal decisions in occupational contexts. Social workers, tax accountants, and real estate brokers are here to stay, even though they draft instruments dealing with legal rights, represent and negotiate for clients, and give legal advice.

* To accept the view that only the poor need additional legal services would be false and malicious. Sublegal and paralegal occupations are certainly needed by legal aid, but they are also needed to make private firms more efficient.

* A variety of social trends dealing with population, urbanization, government, education, affluence, occupational structure, technology, and our conception of justice indicate growing legal needs throughout the population.

* Various social trends indicate there is an ample labor force available to be trained for sublegal and paralegal occupations.

* The increasing prosperity of Lawyers will encourage the profession to permit growing numbers of sublegal personnel to be hired, even though the profession may resist other reforms.

* Some suggested reforms, such as improving lawyer referral offices, making public relations efforts, and enlarging law schools are not sufficient to solve the problem.

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PREFACE AND ABSTRACT

As legal services have been extended to previously unserved members of society, it has become clear that there are not enough trained people to meet present and projected needs. With increased concern for perceived justice in the society, pressure to provide professionals to render the services has further escalated. An integral part of the concern for universal justice has been a specific concern for redistribution of career opportunities among those not formerly included for consideration as professionals. Experiments in the extension of legal services to the poor, through projects funded by the Office of Economic Opportunity and others, have utilized local residents, not formally trained as professionals. The experiments seem to have shown that there are components of the justice package which can be met and filled by others than fully trained professionals.

The problem of providing justice in a democratic society does not stop with further extension of legal services to the poor alone, nor does it stop with the involvement of the poor in providing those services. Rather, the entire spectrum of socio-economic levels must be considered.

It occurred to a team of lawyers and social scientists at the College of Law, University of Denver, that our present meager knowledge needed to be systematically organized, related to present fact, and projected in the light of current social trends. Under a grant from Social and Rehabilitation Service of the Department of Health, Education and Welfare, the team undertook an investigation of current knowledge in this area and attempted to place that knowledge in the context of present and future needs.

This report deals with fundamental questions in the area of New Careers in Law. It notes that legal knowledge is not and cannot be limited to lawyers – that everyone must make at least simple legal decisions, and that persons in many non-legal occupations must perform legal operations. It explores the responses of the legal profession to various complementary and competing occupations – responses such as bringing lawsuits claiming unauthorized practice of law, negotiating inter-occupational "treaties," and suffering the loss of business or potential business. These matters are considered in Sections I and II.

Section III discusses the nature and extent of unfilled legal needs. It cites studies which have demonstrated the legal needs of the poor and implied the needs of the middle class. It also extrapolates various social trends which indicate accelerating growth of legal needs in the future, especially in view of an expanding concept of justice.

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Section IV explores various proposals of bar associations and others for improving the provision and distribution of legal services, improving lawyer referral services, enlarging law schools, expanding legal aid and public defender offices, instituting group legal services and prepaid legal insurance, and regulating specialization of attorneys. (Some of these reforms are simply insufficient to deal with the problem. Others have been strongly resisted by the bar.)

In Section V, new careers in law for those without law degrees are explored. Certain trends in American society imply that there will be an ample labor force available to hire and train for the new careers, and leading groups in the legal profession have endorsed this reform. The report takes note of a few problem areas of new careers in law, including status conflicts and career ladders in small offices. It also discusses how some particular jobs and training for them might be developed and institutionalized.

In general, the appendices expand upon the text. Appendix I lists a large variety of contexts, outside the law office, in which legal services are performed. Appendix II compiles statutory licensing requirements for a variety of paralegal occupations. Appendix III identifies some of the tasks lawyers perform, and includes a bibliography. Considerable research is needed, for until a lawyer's job is carefully analyzed, parts of that job cannot be delegated to sublegals. Appendix IV lists some of the activities most often described by the bar as "unauthorized practice of law." Appendix V relates social trends to particular areas of the law – pointing out the likelihood of increased activity in most areas.

The footnotes of the report comprise a sizeable bibliography of the literature bearing on these problems.

The writing and editing of the report was a team effort. Wilbert E. Moore, Robert B. Yegge, Howard Holme, Gregory Treverton, Ernest Jones, Alan Merson, James Kasenga, and John Houtchens wrote parts of the sections. Appendices were prepared by Jeffrey O. Brown, R. Tim McKenna, and Carol Culbreth, working with others in the team. Weekly critiques and editorial sessions were held in which, in addition to those already mentioned, James Wallace and Howard Rosenberg participated.

Rewriting and editing of the final draft of the report was done by Carla Sykes, Gregory Treverton, and Howard Holme. Preparation and editing of footnotes was done by Howard Holme, Gregory Treverton, and Jeffrey Brown. Anne Wilder and Carol Culbreth were the able and dedicated secretaries for the project.

Robert B. Yegge, Wilbert E. Moore, Howard K. Holme
December 1, 1969 – University of Denver College of Law

Section I

INTRODUCTION

A. Rationale of the Project

Civil rights legislation, concern for "law and order" and safety in the streets, extension of rights of legal representation, increased concern for political participation and new forms of political organization – these recent, current, and prospective changes in the meaning and operation of our legal system are challenges to the adequacy of the supply of legal services.

The legal profession itself has recognized some of these challenges by sponsoring (or at least assenting to) the extension of legal aid organizations, the creation of public defender offices, and similar developments.[1] Yet the profession continues primarily to serve persons of property.[2] Meanwhile, the traditional lawyer-client relationship, which is subject to considerable nostalgic distortion, has been greatly altered in modern legal practice.[3] Corporate clients[4] are very different from individual clients and comprise the major source of business for many leading law firms. [5]Law firms themselves represent a very different setting for the practice of law from the individual practitioner's law office. [6]In view of the growing complexity of legal knowledge and skills, specialization is inevitable and indeed has occurred, often by accident with individual practitioners and small partnerships and with departmentalization in large firms. Bar associations still prevent the regulation of specialization, thereby denying the profession any tests of competence for specialists.

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[1] *See infra* Section IV.

[2] Carlin & Howard, *Legal Representation and Class Justice,* in THE AVAILABILITY OF COUNSEL AND GROUP LEGAL SERVICES: A SYMPOSIUM, 12 U.C.L.A.L. REV. 381 (1965) J. CARLIN, LAWYERS' ETHICS – A SURVEY OF THE NEW YORK CITY BAR, 11–40, especially 12, 24 (1966) [hereinafter cited as LAWYERS' ETHICS]. As *Legal Aid: One Law for the Rich?,* 110 SOL. J. 779 (1966) points out. The Legal Aid practitioners should ask, as other lawyers do, "What can I do for [my client]?" rather than "What is the law on the point?" But in the United States, as in England, those who attempt to reform the law for the poor are sometimes dicouraged, as in the case of California Rural Legal Assistance. *See* 42 CALIF. S.B.J. 640 (1967).

[3] The stratification of the legal profession makes for very different sorts of lawyer-client relationships for lawyers in different strata. LAWYERS' ETHICS 11–40, 165–76, describes the stratification of the New York City bar, and discusses some of the ethical consequences of the different kinds of relationships. Tweed, *The Changing Practice of Law,* 11 RECORD OF N.Y.C.B.A. 13, 16, 21–23, 24–32 (1965) describes a number of important factors: the growth of new areas of law, the growth of firms, and the growth of specialization. V. COUNTRYMAN & T. FINMAN, THE LAWYER IN MODERN SOCIETY 1–42 (1966) describes a variety of different client relationships, springing from solo practice, firm practice, house counsel for corporations, and government counsel. One can hardly find a description of the lawyer-client relationship as it may have existed in the days of the country and family lawyer. *See* A. BEVERIDGE, ABRAHAM LINCOLN 494–607 (1928).

[4] *Compare* LAWYERS' ETHICS and J. CARLIN, LAWYERS ON THEIR OWN (1962), *with* E. SMIGEL, THE WALL STREET LAWYER (1964).

The primary rationale for this investigation into new careers in law is to discover how more and better legal services can be provided – not only to meet legal needs which are currently poorly served or not served at all, but also to anticipate future needs. Some attention will be given to possible reorganization of professional practice, including recognized specialization and the increased use of subprofessionals for rather routine legal services. Attention will also be directed briefly to existing "legal" services that are performed by non-lawyers (sometimes under some amount of supervision by attorneys) in organizational contexts quite alien to the traditional law firm.

The changing perception of "legal needs" referred to in the opening paragraph is a component of the rapidly changing "demand" for extended legal services. The growth is most obvious in the legal needs of the poor, but that does not exhaust the subject. Public health, preventive medicine, and access to routine and emergency medical services without regard to individual ability to pay have been increasingly recognized as social rights, despite the opposition of most of the centers of power in the medical profession.[7] The organized bar appears somewhat reluctant to accept progressive reforms in the provision of legal services, but is less cohesively opposed than has been true of organized medicine.[8] The extension of the "common rights of citizens" with respect to government and the law will increase the demand for legal services of various kinds and this circumstance is increasingly recognized by influential sectors of the legal profession.[9]

The concept of "new careers" in legal services needs some clarification. There is a variety of potential sources of new careers. A number will be identified when there is official recognition of specialization in the practice of law. The bar has feared the breakdown of the legal profession into the kind of self-contained and self-regulating professional groups found in the medical profession.[10] There is, too, the fear that if the bar recognized specialities, competing loyalties to the A.B.A. and lawyers in general on the one hand and to the specialist group on the other would probably be inevitable.

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[5] *See* THE ECONOMICS OF LAW PRACTICE COMMITTEE OF THE COLORADO BAR ASSOCIATION, REPORT ON THE 1967 ECONOMIC SURVEY OF THE COLORADO BAR 5 (1968) [hereinafter cited as COLORADO BAR SURVEY]; E. SMIGEL, *supra* note 4, at 4–5. As early as 1954, one half of legal income came from business. Segal, *A New Look: The Economics Of The Profession*, 43 A.B.A.J. 791 (1957).

[6] *Supra* note 4. See also Q. JOHNSTONE & D. HOPSON, JR., LAWYERS AND THEIR WORK (1968).

[7] *See, e.g.*, Medicare, *Social Security Amendments of 1965*, Pub. L. No. 89–97, 79 Stat. 286 (1965); Comment, *Furor Over Medicaid*, 3 COLUM. J. L. & SOC. PROB. 158 (1967).

[8] *See infra*, Section IV.

But even if "certified corporate specialist" is not a different occupation than "lawyer" (just as "gynecologist" is not a different occupation than "physician"), specialization in law would be likely to ***generate*** new occupational groups. In the same way in which radiology generated the X-ray technician, tax law might generate a non-lawyer tax technician who would be willing to remain on salary rather than becoming a partner, thus avoiding the A.B.A. Canons' prohibition of fee-sharing.[11]

Some new careers will represent new access to occupations already in existence or just beginning to emerge. Certainly part of the thrust for new careers will be the opening of career opportunities to those of minority races. Claims adjusting and security sales are not new careers for whites, but they are new for minority group members.

Educational courses designed to prepare one for a paralegal job will become another source of new occupations. H. Ross, in *Settled Out of Court,* points out that claims adjusting, for example, is virtually never a planned career, nor is there any formal training for such a career in any curriculum.[12] But such courses could be designed and taught by both lawyers and non-lawyers.

Still other "new careers" will be genuinely new occupations to fill legal needs not currently satisfied or needs clearly predictable for the future. Perhaps the law clerk bailiff or housing code advocate will serve as examples.

By analogy with medical practice, the term "paralegal" is often used to refer to occupations complementary to the professional practice of law. But the term is ambiguous. The "paraprofessional" may be engaged in an occupational specialty relevant to the claimed jurisdiction of a profession, but

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[9] *See* Powell, *The President's Annual Address: The State of the Legal Profession,* 51 A.B.A.J. 821 (1965), especially concerning the mission of the Special Committee on the Availability of Legal Services to study the extent of unfilled needs, the adequacy of present methods to fill the needs, and means of filling the needs. Bamberger, Jr., *The Legal Services Program – Is it Socialized Law?,* 51 MASS. L.Q. 317 (1966); Homans, Jr., *The Legal Services Program – Defense of the Accused,* 51 MASS. L. Q. 339 (1966).

[10] 87 A.B.A. REP. 365 (1962).

[11] ABA CANONS OF PROFESSIONAL ETHICS Nos. 23–34; Disciplinary Rules DR 3–102 and 3–103 of the AMERICAN BAR ASSOCIATION SPECIAL COMMITTEE ON EVALUATION OF ETHICAL STANDARDS, CODE OF PROFESSIONAL RESPONSIBILITY (July 1, 1969, later passed by the A.B.A.) [hereinafter cited as CODE]

[12] H. ROSS, SETTLED OUT OF COURT (to be published by Aldine Pub. Co. in 1970).

occupying territory lightly held or long since abandoned: podiatry and pharmacy in medicine; real estate brokerage and tax accountancy in law.[13] The practitioner of ancillary or complementary skills may, by contrast, be clearly subordinate to the professional: nurses, laboratory technicians, and occupational therapists in medicine; legal secretaries, investigators, and title searchers in law.

Despite all the arguments about competency, the necessity for licensing, and fiduciary relationships, the subordinate who clearly acts under the supervision of a lawyer is practically immune from unauthorized practice committees today.[14] (Recently H. Lee Turner of Turner and Baloun of Great Bend, Kansas, who has a three-attorney office employing over 20 subprofessionals was appointed chairman of the A.B.A. Special Committee on Lay Assistants to Lawyers.)[15]

In the case of the subprofessional (sublegal), the fiction is maintained that such a practitioner is doing tasks which would be fully within the competence of the professional, and which the professional would do if he were not more usefully engaged. With increasing specialization, this fiction may be exposed, just as in the increasingly technical character of business management the manager may be less competent than his subordinates in their special fields.[16]

Because the concept of non-lawyers providing legal services is new, there is little established nomenclature. Such terms as "trained, non-lawyer assistants," "lay assistants for lawyers," "legal assistants," "legal technicians," and "legal subprofessionals," are used to describe what are here called "sublegals" and "paralegals." The ***"sublegal,"*** for present purposes, ***is the person who works under the supervision of a lawyer,*** usually in a legal office. He performs some of the routine work which does not require full legal training. An obvious example of a sublegal is an experienced legal secretary. The ***"paralegal" is one who is not a lawyer, nor under direct supervision of a lawyer, but who needs some legal knowledge to do his job well.*** Examples of paralegals are welfare workers, insurance adjusters, and probation officers. Similar *work* might be described as "sublegal" or "paralegal," depending on whether or not it was supervised by a lawyer. For instance, a housing specialist working in the field of zoning, housing code enforcement, or racial discrimination might be called sublegal if he is supervised by a lawyer or paralegal if he is not. Given the nature of occupational status striving, any occupation that proves its specialized worth will eventually demand professional status for itself, but that is scarcely mischievous from a public point of view, however it may be viewed by a long-established professional group.

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[13] *See infra* Section II for details of how the bar has dealt with these and other groups.

[14] 7 AM. JUR. 2d, *Attorneys at Law* Sec. 88 (1963).

[15] UNIVERSITY RESEARCH CORP., PARAPROFESSIONALS IN LEGAL SERVICES PROGRAMS: A FEASIBILITY STUDY 71 (1968) [hereinafter cited as PARAPROFESSIONALS].

[16] W. MOORE, THE CONDUCT OF THE CORPORATION 151–166 (1962).

Friedman documents the early attempts of occupations to achieve professional status and protection through licensing. Licensing provided a means of solidifying an area of competence, not only excluding encroachers but, to a greater or lesser degree, giving the newly organized occupations parity with established "professionals." Friedman's article makes clear that the primary motive of these licensing struggles (and the battles against them by established professions) was the economic well-being and occupational status of the occupations involved – not the public interest.[17]

For instance, legal secretaries would like to become professionalized. ". . . Texas Christian University in conjunction with the National Association of Legal Secretaries has recently begun to give a difficult two-day examination to experienced legal secretaries. Those who pass the examination receive the designation of Professional Legal Secretary."[18]

Present uses of sublegals by existing legal institutions gives an idea of the potential scope of their use in the future. The law office is the logical place to find the sublegal – the legal secretary probably being the first known to the profession. Yet to be meaningfully classified as sublegal, the secretary should do more than take dictation and type. To be classified as sublegal, she should be a person with some training, as well as responsibility, who helps the lawyer by actually performing some of his legal tasks.

The work that can be successfully accomplished by sublegals has several characteristics. Such work is high in volume and amenable to standardization of forms and routinization of procedures. It can be broken down into separate steps, which are often listed on checklists used by the sublegal.[19] One firm, with three attorneys and 23 lay personnel, has developed procedures and checklists for 30 different office and legal functions. According to ***Paraprofessionals,*** these functions include: accounting, appeals to Supreme Court, appointments, billings, brief files, calendar, corporations, corporation dissolution, depositions, distribution of incoming mail, Federal Court removals, filing and out cards, friendly hearings, insurance-liability defenses, interrogatories-incoming, interrogatories-outgoing, library, office procedure memo, payroll, pleadings, real estate specialists, subrogation, supplies, telephone ticklers, training of new personnel, transcription, trials, workmen's compensation-defense, workmen's compensation-claimant.[20]

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[17] Friedman, *Freedom of Contract and Occupational Licensing – 1850-1960,* 53 CALIF. L. REV. 512–17 (1965).

[18] AMERICAN BAR ASSOCIATION COMMITTEE ON ECONOMICS OF LAW PRACTICE, THE LAWYERS' HANDBOOK 86 (1962). The following discussion relies heavily on Holme, *Paralegals and Sublegals: Aids to the Legal Profession,* 46 DENVER L. J. No. 3 (1969).

[19] PARAPROFESSIONALS 73.

Many tasks described in Jerome Carlin's book, *Lawyers on Their Own*, are carried out by secretaries in most law offices, but single practitioners often perform them themselves.[21] Some law school graduates, accredited members of the bar, frequently do routine, simple work which does not require a complete legal education. In this context, Carlin also mentions corporate jobs such as establishing or dissolving corporations and preparing and filing routine papers.[22] He includes, too, real estate jobs including work on purchase agreements, applications for mortgages, title guarantee policies, escrow accounts, leases, landlord-tenant squabbles, rent collections, and evictions.[23] Personal injury work which in some cases could be handled by subprofessionals includes building the file, preparing and explaining the retainer contract, interviewing, factual investigating, and gathering the proof of special damages.[24] Other similar work involves negotiating with a claims adjuster (a paralegal), and preparing and filing court papers to bring suit.[25] Estate planning, drafting of trusts, and preparation of wills may also involve much work that could be performed by a subprofessional. Carlin notes that Chicago banks often do the preparation and drafting of wills in return for an agreement that the bank be the executor.[26] Probate clerk sublegals may prepare and file an inventory of assets, prepare estate tax returns, make status of accounts reports, and transfer securities to beneficiaries.[27]

Carlin's study concerns the single practitioner rather than the paralegal or the sublegal, but the individuals he studied were forced to do jobs that might often be done by non-lawyers. Carlin recognizes that these lawyers' jobs are often threatened by lay competition.[28] He points out some of the reasons for successful lay competition: (1) convenience and efficiency – lay groups have standardized and simplified the work and are often more accessible to the community; (2) balance of skills and power – a lay specialist may often become more skilled in a given field than a general practitioner and may belong to economically stronger groups; (3) greater visibility in the community – enhanced by advertising restrictions imposed upon lawyers by the *Canons of Ethics;* and (4) lower prices charged by the layman.[29] If single practitioners could employ sublegals, they might escape the threat of losing some of their source of income and the drudgery of routine and undesirable jobs.

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[20] *Id.* at 99 & n. 26.

[21] J. CARLIN, LAWYERS ON THEIR OWN (1962).

[22] *Id.* at 43.

[23] *Id.* at 52.

[24] *Id.* at 71, 72.

[25] *Id.* at 72.

[26] *Id.* at 102. In Denver, the Statement of Principles and Canons of Conduct between the Denver Bar Association and the Trust Departments of the Denver Clearing House Banks, signed in 1936, sets standards for bankers and lawyers.

[27] PARAPROFESSIONALS 72.

[28] J. CARLIN, *supra* note 21, at 142.

Some legal services programs have experimented with the use of sublegals.[30] Sublegals can alleviate two of legal aid's greatest problems, the overwhelming caseload and the isolation of the profession from many poor people in the community.

In addition to these sublegal occupations, a number of paralegal occupations exist. These more clearly defined occupations have called forth a broad spectrum of reactions from the organized bar. Some have been ignored, others have been recognized by "treaties," while still others have been sued by unauthorized practice committees. These responses will be discussed in a later section of the report. Our primary focus, however, will be on new occupations in legal services and we shall try to make explicit the possible role of the legal profession as such both in training and in organizational context for such occupations.

In this limited exploration we have attempted to avoid one misleading set of assumptions: that only the poor need additional legal services, that only the poor require new occupational opportunities at the subprofessional level, and consequently that the legal needs of the poor should be met with subprofessional services. From the point of view of equal justice, or what we shall later call the "justice package," the whole set of assumptions would be false and malicious. We are concerned, to repeat, with unmet legal needs and with ways of fulfilling them. It is not only the poor who need paralegal practitioners, and not only the rich who need lawyers.[31]

B. The Current State of Legal Services

Let us indulge in another paraphrase of a classic aphorism and suggest that law is too important to be left to lawyers. It is certainly true that law is such a pervasive aspect of human activity and social relations in contemporary societies that the ordinary adult can scarcely avoid acting as his own lawyer to some degree. Securing an automobile registration or driver's license, opening a banking or checking account, accepting a credit card, filling out a tax return – all these involve contractual or administrative transactions and assume that the individual has substantial knowledge and competence regarding his legal rights and responsibilities.

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[29] *Id.* at 143, 144.

[30] *Id.* at 70, 71.

[31] *See e.g.*, Sparer, *The Role of the Welfare Clients' Lawyer*, in THE AVAILABILITY OF COUNSEL AND GROUP LEGAL SERVICES: A SYMPOSIUM, 12 U.C.L.A.L. REV. 279, 361 (1965). The legal problems affecting welfare recipients are knotty, and the determination of one question, for instance welfare residency requirements, affects thousands of people in all states and millions of dollars of benefits. Shapiro v. Thompson, 394 U.S. 618 (1969).

As an illustrative list of the ordinary individual's probable encounters with agents of the law (not necessarily lawyers), we may note the following:

- *Felonies and misdemeanors*
  - Police officers, magistrates, judges, and sometimes lawyers[32]
  - Probation and parole officers[33]
- *Family matters*
  - Divorce lawyers[34]
  - Adoption agencies[35]
  - Marital counselors[36]
  - Juvenile court officers[37]
  - Welfare and social workers[38]
- *Property transfers, inheritance, probate*[39]

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[32] Comment, *Constitutional Law – Right to Counsel Attaches when Police Process Becomes Accusatory*, 1 Ga. S.B.J. 536 (1965); LaFave & Remington, *Controlling the Police: The Judge's Role in Making and Reviewing Law Enforcement Decisions*, 63 MICH. L. REV. 987 (1965); Schaefer, *Police Interrogation and the Privilege Against Self-incrimination*, 61 NW. U.L. REV. 506 (1966); *Symposium – Police Powers 1966-1967*, CRIM. L. REV. 583, 639, 3, 75 (1967); Silverstein, *Continuing Impact of Gideon v. Wainwright on the States*, 51 A.B.A.J. 1023 (1965).

[33] Chesnut, *Police, the Courts, the Public, and the Parole System*, 36 OKLA. B.A.J. 1537 (1965); Leary, *Parole Administration in the U.S.*, 11 CRIME & DELINQ. 265 (1965); Thorne, *Behavior Identification Techniques: New Tool for Probation Officers*, 31 FED. PROB. 21 (1967).

[34] Foley, *Lawyer's Role in Domestic Relation Cases*, 36 OKLA. B.J. 2377 (1965); O'GORMAN, LAWYERS AND MATRIMONIAL CASES (1963); Foster, Jr., & Freed, *Unequal Protection: Poverty and Family Law*, 42 IND. L.J. 193-200 (1967).

[35] Gray, *Adoption and the Legal Profession*, 40 LOS ANGELES B. BULL. 78 (1964); Katz, *Foster Parents Versus Agencies: A Case Study in the Judicial Application of "The Best Interest of the Child" Doctrine*, 65 MICH. L. REV. 145 (1966).

[36] Powell-Smith, *Marriage License Formalities*, 116 NEW L.J. 32 (1965).

[37] Foster, Jr., & Freed, *supra* note 34, at 214 20;Elson & Rosenheim, *Justice for the Child at the Grassroots*, 51 A.B.A.J. 341 (1965)

[38] Comment, *Aid to Families with Dependent Children – A Study of Welfare Assistance*, 44 DENVER L. J. 102 (1967); Social workers: Sloane, *Juvenile Court: An Uneasy Partnerhsip of Law and Social Work*, 5 J. FAMILY L. 170 (1965).

[39] Comment, *supra* note 38; Obenberger, *Unauthorized Practice of Law: Necessity of Executor to Appear by Attorney in Probate Proceeding*, 49 MARQ. L. REV. 808 (1966); *Unauthorized Practice of Law: Attorney v. Real Estate Broker*, 7 SANTA CLARA LAW. 132 (1966); Baier, *Developing Principles in the Law of Unauthorized*

- Bankers, insurance agents, securities salesmen[40]
- Real estate brokers and escrow agents[41]

Small transactions and consumer interests

- Credit counselors[43]
- Notaries public[44]
- Small claims court officers[45]

Tax matters

- Tax officials
- Proprietary tax consultants[46]
- CPA's and other accountants[47]
- Appraisers

Bankruptcy and debt management[48]

Practice Re Real Estate Brokers, 9 ST. LOUIS U.L.J. 127 (1964); Fletcher, *Washington's Non-Intervention Executor – Starting Point for Probate Simplification*, 41 WASH. L. REV. 33–39 (1966).

[40] Comment, *Unauthorized Practice of Law: Bank Prohibited from Providing Estate Analysis Service*, 1966 DRAKE L.J. 1146; Comment, *Life Insurance Salesman: Professional Status and Liability*, 21 N.Y.U. INTRA. L. REV. 60 (1965); Briloff, *Accounting in Estate Planning*, 103 TRUSTS & ESTATES 1078 (1964); *Life Insurance in Estate and Business Planning. . . a Forum*, 105 TRUSTS & ESTATES 679–694 (1966); Josephs, *Creating Manageable Estates: the Life Underwriter – Trust Officer Twinship. . . One Creates Estates, the Other Manages Them*, 106 TRUSTS & ESTATES 197 (1967); Chittick, *Responsibilities of Professionalism – the Chartered Life Underwriter and the Law*, 31 UNAUTH. PRAC. NEWS 7 (1965).

[41] Comment, *Independent Escrow Agent: the Law and the Licensee*. 38 S. CAL. L. REV. 289-91 (1965); Conway-Bogue Realty Investment Co. v. Denver Bar Assn., 135 Colo. 398, 411, 312 P. 2d 998, 1004 (1957).

[42] Comment, *Consumer Legislation and the Poor*, 76 YALE L.J. 745, 752-53, 764-67 (1967).

[43] Resh, *Collection Agencies. the Case Against Assignment for the Purpose of Suit*, 32 UNAUTH. PRAC. NEWS 1 (no. 2, 1966).

[44] Comment, *Notary Public*, 16 BAYLOR L. REV. 388 (1964).

[45] Comment, *Establishment of Small Claims Court in Nebraska*. 46 NEB. L. REV. 152 (1967); Comment, *California Small Claims Court*. 52 CALIF. L. REV. 876 (1964).

[46] Briloff, *supra* note 40.

[47] Bittker, *Does Tax Practice by Accountants Constitute the Unauthorized Practice of Law?*. 25 J. TAXATION 184 (1966); Groh, *Responsibilities and Legal Liabilities of the C.P.A. in Tax Practice*, 25 J. TAXATION 296 (1966); Denega, *Role of Accounting in Tax Law*, 11 MCGILL L.J. 116 (1965); Minty, *Accountancy and Law: Should Dual Practice Be Proscribed?*. 53 A.B.A.J. 225 (1967).

[48] Comment, *Budget Planners – Regulation to Protect Debtors*. 17 VAND. L. REV. 1565, 1567-68 (1964); Henson, *Schlockmeister's Jubilee: Bankruptcy for the Poor*, 40 REF. J. 69 (1966); Comment, *Resort to the Legal Process in Collecting Debts from High Risk Credit Buyers in Los Angeles – Alternative Methods for Allocating Present Costs*, 14 U.C.L.A.L. REV. 879, 879-80, 886-94, 896-901 (1967).

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"Retail" administrative relations:

Social security, workmen's compensation, unemployment insurance, etc.[49]

(Appendix I provides descriptions of some examples of non-lawyers engaged in some law practice.)

Clearly the ordinary citizen as family member, car owner, consumer, saver, and recipient of government services must indeed act as his own lawyer. He often does so in relations with others whose *occupations* involve legal problems, although not necessarily at a professional level or in a strictly professional context. Some organizational contexts of paralegal occupations are set forth in Appendix I, in outline form. That does not, of course, provide an exhaustive listing of either settings or occupations. It does serve to remind us that law is practiced in administrative agencies and legislatures as well as in courts and law offices; that there are types of business firms organized primarily to provide legal services – an example being the title insurance company – and others that require various legal services at least for internal purposes; and that various professions other than the law are involved in varying degrees with the legal problems of clients: physicians, social workers, clergymen and, these days, even college administrators.[50]

With so many non-lawyers (laymen, from the lawyers' point of view, whatever their other claims to professional standing) practicing law, it is scarcely surprising that those who claim exclusive jurisdiction over all matters legal should attempt to protect their frontiers as well as to oust infiltrators who have reached the interior. We shall examine the complex issues in the unauthorized practice of law a few paragraphs hence, as the concept of unauthorized practice reveals the hazy boundaries separating the legal knowledge and competence of the ordinary citizen from that of the various paralegal occupations and from the type of competence requiring genuinely professional levels of training and responsibility.

Nor is it surprising that a considerable variety of "law-practicing" occupations should be regarded as sufficiently involving the public interest to merit legislative standards for training and licensing. Appendix II summarizes a sampling of such requirements from several state jurisdictions. The quest for training standards and other criteria for admission to an occupation is almost invariably sought by an occupational group itself, not imposed on behalf of aggrieved clients or consumers.[51] Yet the official rationale for such surveillance of occupational competence always involves a dual protection: both the hapless client and the competent (and honorable) practitioner are to be protected from charlatans.[52] As with other criteria of professionalism, licensing (and therefore claims to a particular jurisdiction) will almost certainly be sought by new technical occupations and by others seeking technical upgrading and corresponding public recognition and protection.[53]

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[49] Reich, *Social Welfare in the Public-Private State*, 114 U. PA. L. REV. 487 (1966); Handler & Rosenheim, *Privacy in Welfare: Public Assistance and Juvenile Justice*. 31 LAW & CONTEMP. PROB. 377, 382-84 (1966); Rosenblum, *Controlling the Bureaucracy of the Anti-poverty Program*, 31 LAW & CONTEMP. PROB. 187 (1966); Comment, *Aid to Families with Dependent Children – A Study of Welfare Assistance*, 44 DENVER L.J. 102, 112-16 (1967).

[50] Powers, *Interprofessional Education and the Reduction of Medico-Legal Tensions*, 17 J. LEGAL ED. 167 (1965); *Symposium – Student-Institutional Relationship*, 45 DENVER L.J. 1 (1968).

The licensing of lawyers is, of course, deeply rooted in our legal history, and for the foregoing reasons.[54] Yet the professional standards remain remarkably uneven, even after discounting differences attributable to age and the changing standards of training and other criteria for admission to the bar.[55] Since our primary concern here is not with upgrading the standards of professional competence of the legal profession, we shall not attempt a critical examination of this problem. Yet a few comments are in order, for the attempt to create new careers in law cannot be viewed independently of what lawyers do and might do.

Certain assertions will be recorded concerning the current state of legal training and practice.

Item: Among all products of post-baccalaureate professional schools, law-school graduates have the lowest rate of subsequent professional practice (they are rivaled only by graduates of schools of theology).[56] Legal training, then, is often used as a bridge to other occupations, thus substantially impairing a genuine sense of professional identity at the professional-training stage.[57]

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[51] *See, e.g.*, Watts, *Current Role of A.B.A. and Admission to the Bar,* 40 FLA. B.J. 91 (1965); Baxter, *Let's Raise Educational Requirements for Admission to the Bar,* 2 GA. S.B.J. 171 (1966). Further, those occupational groups often seek standards or impose admission requirements far in excess of what the public interest would seem to demand. Barrow, *Business and Professional Licensing – California, a Representative Example,* 18 STAN. L. REV. 640, 650-57 (1966). The latter part of this article provides a provocative discussion of optional licensing, i.e., permitting non-licensed practitioners of certain professions to co-exist with licensed ones and letting the public make its own choices, as it now does with most other goods and services.

[52] Barrow, *id.* at 642; Eley, *Michigan's Professional and Occupational Licensing: Organization and Powers,* 41 U. DET. L.J. 347 (1964), for example.

[53] Barrow, *supra* note 51, at 650-54.

[54] Eley *supra* note 52, at 348, presents the concept of insuring a certain level of competence to the public that is often used as a justification for licensing, especially in law and medicine. The article gives a general list of reasons for professional licensing. *Id.* at 349.

[55] Baxter, *supra* note 51, presents a clear profile of the varying standards for admission among state bars. Nagerer, *Bar and the Public,* 42 CALIF. S.B.J. 107 (1967) shows lawyers' concern that variations in professional standards among them are clearly perceived by the public. *See* WEST PUBLISHING COMPANY, RULES FOR ADMISSION TO THE BAR (1963).

[56] W. MOORE, PROFESSIONS: ROLES AND RULES, Chap. 4 Professional Socialization (to be published by The Russell Sage Foundation, 1970).

Item: A great deal of professional-school training has minimal relevance to the professional practice of law, somewhat higher relevance to passing bar examinations.[58] Curricula of this type do not even make for good "trade schools." Law-school curricula in good schools are being continually upgraded intellectually,[59] but bar examinations still have little to do with skills relevant to the practice of law.

Item: In the practice of law, there is a highly unequal distribution of legal talent (and of conformity with professional ethics) by type of practice and clients.[60] As suggested earlier, the phenomenon of the paralegal lawyer is not uncommon. Such a lawyer may be performing essentially routine legal tasks not requiring professional-level training, although they may, by convention, require authentication by a licensed practitioner.[61]

Item: There is a highly unequal provision of legal services (by *any* licensed practitioner, regardless of other quality considerations) in terms of the socio-economic status of clients.[62]

Item: The "leading members" of the bar (partners in successful firms, the appellate judiciary) do not seem to be unnerved by (a) legal reform, (b) reform of the profession, or (c) new paralegal occupations.[63] Other attorneys may feel threatened in varying degrees, and may react in varying degrees (such as by strengthening "unauthorized practice" actions).[64]

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[57] Moore, *Occupational Socialization*, in HANDBOOK OF SOCIALIZATION 861-883 (D. Goslin ed. 1969). *See also* W. MOORE, *Supra* note 56.

[58] *Symposium – From Student to Lawyer*, 34 B. EXAM 4, 9-10, 34-35 (1965) makes this point somewhat more euphemistically than we have. It is corroborated by Kelso, *Curricula Reform for Law School Needs of the Future*, 21 U. MIAMI L. REV. 509 (1967); Rosenberg, *A New Lawyer Looks at an Old Profession*, 52 A.B.A.J. 157 (1966).

[59] Watts, *supra* note 49, at 93; Pincus, *Reforming Legal Education*, 52 A.B.A.J. 436 (1967); *Symposium on Legal Education*, 21 U. MIAMI L. REV. 505 (1967); *Roundtable on Curricular Reform*, 20 J. LEGAL ED. 385 (1968).

[60] See Brown, *Law Offices for Middle-Income Clients*, 40 CALIF. S.B.J. 720 (1965); E. CHEATHAM, A LAWYER WHEN NEEDED (1963); Clark & Corstvet, *The Lawyer and the Public, An Association of American Law Schools Survey*, 47 YALE L. J. 1272 (1938); Llewellyn, *The Problem of the Undone Legal Service*, 26 A.B.A.J. 38 (1940); Koos, The Family and the Law (mimeo 1949); Cheatham, *A Lawyer When Needed: Legal Services for the Middle Classes*, 63 COLUM. L. REV. 973 (1963); McCaplin, *The Bar Faces Forward*, 51 A.B.A.J. 543 (1965); Carlin & Howard, *supra* note 2.

[61] Comment, *The Unauthorized Practice of Law by Laymen and Lay Associations*, 54 CALIF. L. REV. 1331 (1966); J. CARLIN, *supra* note 19.

[62] *See* Robb, *Alternate Legal Assistance Plans*, 14 CATHOLIC LAW. 127, 141 (1968); Carlin & Howard, *supra* note 2. Of the almost 320,000 lawyers in this country (AMERICAN BAR FOUNDATION, THE 1967 LAWYER STATISTICAL REPORT 12 (F. Weil, ed. 1968) [hereinafter cited as STATISTICAL REPORT]), less than 1 percent, or 2,300, are devoting their full time to helping the poor with their civil problems. Robb, *HEW Legal Services: Beauty or Beast?*, 55 A.B.A.J. 346 (1969).

In a subsequent section we shall speculate about the future implications for the professional bar of certain unmistakable trends – for example, the increased demand for certain legal services now poorly delivered and the decreased demand for others. Representation in negligence cases will serve as an example. Such cases currently account for a goodly proportion of nominally professional employment of lawyers and are the chief cause of excessive delays in court dispositions.[65]

For the moment, however, let it suffice to suggest that the legal profession, as things stand now, lacks the kind of organization necessary for providing the full range of legal services required by the society.

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[63] *See* McNeal, *Court Congestion – Sense or Nonsense?*, 20 INS. COUNSEL J. 100 (1965); Wham, *Civil Jury Backlogs: Should We Amend the Constitution?*, 53 A.B.A.J. 643 (1967); Kaufman, *Courts in Crisis: Progress Versus Intransigence*, 52 A.B.A.J. 1026 (1966).

[64] *See* Committee on Unauthorized Practice of Law, *Informative Opinion A of 1967*, 53 A.B.A.J. 646 (1967); Resh, *The Bar's Duty to Prevent Unauthorized Practice*, 30 UNAUTH. PRAC. NEWS 177 (1964); and Cedarquist, *Panel Discussion on "Group Legal Services,"* 33 UNAUTH. PRAC. NEWS 12 (1967).

[65] Wham, *supra* note 63, at 644. *See infra* Section IV.

Section II

REACTIONS OF THE BAR TO COMPETITION

The past has a powerful influence on the legal profession. But traditional ways do not always fit changing situations, and today we are in a period of growing need for attorneys and growing prosperity for the profession as a whole.[1] These factors may encourage lawyers to train and use paralegals and sublegals.

During the Depression of the 1930's, lawyers, as well as other occupational groups, were underemployed. With competition for legal business sharpened by hunger, lawyers formed committees to combat unauthorized practice and assure that attorneys, and only attorneys, practiced law.[2] When the struggle for survival slackened, the profession began to negotiate with non-lawyers and the results were "inter-occupational treaties" which recognized the legitimacy of ancillary occupations.[3] A third tactic (or non-tactic) of the bar has been simply to permit other occupations to take over some legal tasks and to accept the consequent loss of business or potential business.[4] A final approach to lay competition – one that the bar has seldom taken – is to train non-lawyers in the law. It is this final approach that this report will emphasize, but first we should examine the other responses more closely.

A. Unauthorized Practice Committees

Unauthorized practice committees were formed in the early thirties and were more active in the second half of the thirties than during any other half decade.[5] Most states have statutes limiting the practice of law to attorneys.[6]

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[1] See *infra* Section III, note 1. As indicated there, the ratio of lawyers to the total population has become steadily larger, presumably in response to greater need and opportunities for lawyers. In addition, from 1961 to 1966, average attorneys' earnings increased 20.8%, while the consumer price index grew only 7%. U. S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE U.S.: 1967 355 (1967).

[2] Llewellyn, *The Bar's Troubles and Poultices – and Cures?* 5 LAW & CONTEMP. PROB. 104,113-114 (1938).

[3] See MARTINDALE-HUBBELL, 3 MARTINDALE-HUBBELL LAW DIRECTORY 215 A (1969).

[4] Llewellyn, *supra* note 2, at 113-114.

[5] Based on a survey by Howard Holme of unauthorized practice decisions compiled in 3 7th DEC. DIG., *Attorney and Client* Sec. 11 (1967).

Penalties may include contempt of court and criminal sanctions. The legislative mandate is generally supplemented with the power of the state judiciary to define and regulate the practice of law.[7]

It is of some embarrassment to attorneys that they police their own occupational territory.[8] Generally, the state attorney general brings suit against those who practice medicine or barbering without a license.[9] But it is usually the local or state bar association which brings suit against the person or group "practicing law."[10] The public may not always agree with the bar association that the public interest is best served by asserting or maintaining a monopoly of the business for attorneys.[11]

Unauthorized practice committees often illustrate the ambivalence of lawyers' feelings about self-policing. Several committees have even considered "going out of the business" of identifying, investigating and initiating litigation, leaving that for the state attorney general. While it seems fairly unlikely that many committees will dissolve themselves, the consideration of that possibility indicates that the bar is less concerned with pursuing its competitors than it has been in the past. Another indication of reduced concern with competition is the recent decision of the American Bar Association to form a committee to consider the training and use of "Lay Assistants for Lawyers."[12]

Over the years actions against unauthorized practice by the bar have centered on a number of legal operations and operators. Johnstone and Hopson divided these operations into three categories: litigation or represen-

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[6] This is implicit in the laws against unauthorized practice. These laws generally agree that the "practice of law" should be restricted to licensed attorneys; controversies usually arise in defining what acts are included in that practice.

[7] 7 AM. JUR. 2d, *Attorneys at Law* Sec. 73 (1963); AMERICAN BAR FOUNDATION, UNAUTHORIZED PRACTICE SOURCE BOOK 10-12, 46-49 (1958).

[8] *See, e.g.,* Resh, *The Bar's Duty to Prevent Unauthorized Practice,* 30 UNAUTH. PRAC. NEWS 177, 181-82 (1964).

[9] *See* Barron, *Business and Professional Licensing – California, a Representative Example,* 18 STAN. L. REV. 640 (1966).

[10] This is obvious from a survey of the UNAUTHORIZED PRACTICE NEWS. Most of the cases cited list bar associations as plaintiff.

[11] A striking example is the Arizona real estate controversy. The bar successfully sued the real estate brokers and title insurance companies claiming unauthorized practice concerning the preparation of documents and the giving of advice. State Bar of Arizona v. Arizona Land Title and Trust Co. 90 Ariz. 76, 336 P. 2d 1 (1961) and 91 Arizona. 293, 371 P. 2d 1020 (1962). Shortly after the decision, brokers and others initiated and passed a state constitutional amendment reversing the case. ARIZ. CONST. art 26, Sec. 1. See Q. JOHNSTONE & D. HOPSON, JR., LAWYERS AND THEIR WORK 170 (1967).

[12] 93 A.B.A. REP. 353 (1968).

tation, the drafting of legal instruments, and legal advising.[13] Unauthorized practice of law has been categorized in greater detail by the West Digest System into eleven divisions: "in general, acts constituting the practice of law in general, drafting or preparation of documents, administrative practice in general, banks and trust companies – title companies, heir hunting, labor relations, out of state attorneys, patents and trademarks, real estate agents, and tax practice."[14]

Courts have developed several criteria for deciding whether the performance of a practice by laymen is legal or illegal. Without going into detail, we can list some of the arguments on both sides.

The overriding criterion – the public interest – requires the courts to balance the claims of many groups. Consumers of legal services form perhaps the most important such group; they need legal services that are inexpensive and convenient, characteristics often more typical of services provided by paralegals. While our economy is at least nominally based on a free enterprise market system in which the consumer makes his choice and takes his chances, he needs protection from incompetent or dishonest practitioners. In a profession where the quality of service may remain undertermined for long periods of time, this argument is a strong one for the monopoly of the licensed bar. Perhaps no example is more obvious than wills. A poorly drafted will would normally remain untested until a person's death. By then, of course, it is too late and much injustice can result.

A second group with claims to the public interest is the bar itself. The public has a continuing need for a body of well trained lawyers and also needs information on how to get access to them. But the profession has designed its *Canons of Ethics* in such a way that, for several reasons, places lawyers at a disadvantage compared with laymen in the solicitation of business.[15] It is argued that the continued existence of a large, strong bar which maintains current ethical standards depends on limiting the practice of law to members of the legal profession.[16]

The judiciary and administrative agencies need practitioners with sufficient knowledge to preserve due process. Especially in adjudicatory and adversary hearings, attorneys have built and preserved due process – and it is in the courts that the attorneys' monopoly is strongest.[17]

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[13] *See* Q. JOHNSTONE & D. HOPSON, JR., *supra* note 11.

[14] 3 7TH DEC. DIG., *Attorney and Client* Sec. 11 (1967).

[15] ABA CANONS OF PROFESSIONAL ETHICS 27, 28 [hereinafter cited as ABA CANONS]. Disciplinary Rules DR-2-101 through DR-2-105 (AMERICAN BAR ASSOCIATION COMMITTEE ON EVALUATION OF ETHICAL STANDARDS, CODE OF PROFESSIONAL RESPONSIBILITY 21-26, (July 1, 1969, later passed by the A.B.A.) [hereinafter cited as CODE], broadly prohibits lawyers from advertising themselves in any medium, forbids them to refer clients to themselves or associates, and prevents them from publicly holding themselves out as specialists in any particular area of law.

[16] *See* Ethical Consideration EC3-1, CODE 45.

Complexity tests are another criterion for unauthorized practice actions.[18] Certain simple documents, a marriage license for example, may have great legal consequences, yet no legal advice is required. At the other end of the spectrum are exceedingly complex documents whose drafting and interpretation certainly require attorneys. The complexity test is an especially valid one, and is functionally important in helping to determine how much training is necessary to make the operator competent. One of the determinants of both complexity and training time is the degree to which the narrow field is inextricably intertwined with other legal fields.[19]

The degree of specialization and standardization in a field obviously bears on the problem. For instance, *Conway-Bogue Realty Inv. Co. v. Denver Bar Association*[20] holds that while real estate brokers do practice law (they fill out standardized contracts and forms), they do so only in a specialized area of the law, and they are permitted to perform such tasks as fall within that very specialized area.

The size of the transaction, in terms of money and importance to the individual, is another benchmark for determing whether an attorney should be involved. When renting a small apartment, one may well rely on his own judgment and an oral agreement, but when a corporation leases a large building for a long period, the corporation may employ lawyers to study the agreement very closely.

Other opinions use judicial language like "incidental to business," "compensation" theory, and "personal representation."[21] Courts recognize the cost of legal services, and realize that an "incidental" service with legal implications performed "without compensation" is not likely to be a very extensive service nor is it likely to involve serious risk for the client. Thus, for instance, some cases hold that conveyancing or other minor services incidental but related to a real estate broker's business are permissible.[22] Courts have generally held that regardless of the complexity or size of the task, a person may "represent himself."[23] This indicates that if a person feels competent to handle the matter or feels that the matter is too trivial to hire a lawyer, then the court will not restrain him from acting as his own lawyer.

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[17] 7 AM. JUR. 2d, *Attorneys at Law* Sec. 73 (1963).

[18] *Id.* at Sec. 73 & n. 8.

[19] *See, e.g.* 7 AM. JUR. 2d, *Attorneys at Law* Sec. 74 & n. 20 (1963); Q. JOHNSTONE AND D. HOPSON, JR., *supra* note 11, at 174. *See* Appendix III for a discussion of the way certain lawyers' skills and activities are related to complexity.

[20] 135 Colo. 398, 312 P.2d 998 (1957).

[21] *See* 7 AM. JUR., 2d, *Attorneys at Law,* Sec. 74, Sec. 76, Sec. 72 & n. 12, 13 (1963).

[22] *Id.* at Sec. 74 & n. 7; AMERICAN BAR FOUNDATION, , *supra* note 7; Q. JOHNSTONE & D. HOPSON, JR., *supra* note 11, at 165.

A final criterion used by courts is the "common understanding" test – where the practice is commonly done by lawyers and commonly understood to be done by them.[24] This criterion recognizes the importance of local custom. If the real estate closing is typically attended by an attorney in the East, but not in the West, then the courts may help to preserve the procedure.

B. Inter-Occupational Treaties

In some areas, attorneys have attempted to reconcile their differences with ancillary occupations through negotiations. The American Bar Association has negotiated nine "statements of principles" with different groups. In general, each statement provides for a conference committee consisting of lawyers and members of the other group to meet, to determine the areas in which attorneys and the other practitioners can cooperate, and to discuss problem areas. The conference committee may also issue additional statements clarifying the statement of principles or discussing certain practices.

Implied in ratification of a statement of principles is bar recognition of the legitimacy of the ancillary occupation and some of its law-related activities. The statements of principles thus recognize the complementarity of the occupations, which include claims adjusters (passed in 1939), banks with trust functions (passed in 1941), publishers (passed in 1941), realtors (passed in 1943), life insurance agents (passed in 1948), accountants (passed in 1951), collection agencies (passed in 1955), social workers (passed 1965), and architects (passed in 1968). The American Bar Association also instituted a conference with casualty insurers in 1962, but as yet there is no approved statement of principles.[26] Some state and local bar associations have also negotiated agreements with ancillary occupations.[27]

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[23] *See e.g., In re* Opinion of the Justices, 194 N.E. 313, 317, 289 Mass. 607 (1935); and Q. JOHNSTONE & D. HOPSON, JR., *supra* note 11 at 166; AMERICAN BAR FOUNDATION, *supra* note 7, at 52.

[24] 7 C.J.S., *Attorney and Client* Sec. 3 & n. 22 (1937); Q. JOHNSTONE & D. HOPSON, JR., *supra* note 11, at 166; AMERICAN BAR FOUNDATION, *supra* note 7 at 50.

[25] For a general discussion of the conference, *see* Q. JOHNSTONE & D. HOPSON, JR., *supra* note 11, at 184-187. For the treaties themselves, see MARTINDALE-HUBBELL, *supra* note 3, at 215A-229A.

[26] MARTINDALE-HUBBELL, *supra* note 3, at 214A.

[27] Rush, *Lawyer-Realtor Relations*, 41 FLA. B.J. 170 (1967), using Florida as an example, shows how effectively lawyers and realtors can cooperate.

There is reason to doubt the effectiveness of treaty negotiation:

> Most of the conferences meet at least once a year, but one or two are relatively inactive. In disposing of complaints, the conferences rely on persuasion rather than sanctions. Presumably the various associations of laymen that are parties to the agreements have the power to punish violators by expelling them from association membership, but seemingly there have been no such expulsions. Nor would this be much of a sanction, as association membership is rarely essential to engaging in a trade or profession. And this sanction leaves beyond control those who are not association members, a sizable group in most occupations.[28]

C. Sufferance of Lost Business

One of the most insightful discussions of unauthorized practice is one of the oldest, "The Bar's Troubles and Poultices – and Cures?" by K.N. Llewellyn.[29] As Llewellyn looked at claims that "encroachers" were engaged in the unauthorized practice of law, he concluded that:

> (1) Old lines of business are certainly drifting or being sucked into non-Bar hands, but with real probability that this is because they are being done more adequately or cheaply or both by outside agencies, first; and second, because those outside agencies are making their serviceability *known,* such as it is. (2). . .Much business which has never reached lawyers at all, . . .much business which has only in the last decades come into existence at all,. . . has been *discovered* and has been *elicited* from "the public" by these other agencies. (3) "Encroachers" are specialists; each has worked out machinery for handling with maximum use of patterns, forms, routine, and concentration of expensive executive decision, a semi-mass production of legal transactions or legal services in a very limited field.

The shrinkage of the lawyer's domain may have been inevitable. Professional groups across the board have seen new occupations arise in which specialists have become a little better or less costly in performing a particular function.[30] As the area of one's special competence is limited, his dependence on others increases. For example, lawyers used to do a good deal of title searching, but now they have lost most of that business and must refer clients to title insurance companies.[31] The growth of specialized occupations of a paralegal nature may serve to reduce the need for lawyers in certain areas, but the absolute need for lawyers has not declined. The growth of these paralegal occupations also leads to a need for paralegal training. A final implication of occupational specialization is that lawyers have more competitors for their claim to being "the men who can get things done." The prestige of the legal profession may be slightly impaired.

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[28] Q. JOHNSTONE & D. HOPSON, JR., *supra* note 11, at 185.

[29] Llewellyn, *supra* note 2, at 112.

[30] *See* Barer, *The Developing Principles in the Law of Unauthorized Practice re Real Estate Brokers,* 9 ST. LOUIS U.L.J. 134 (1964).

D. The Training of Non-Lawyers by Lawyers

As Llewellyn says, ". . .[T]he public *will* be served; though the lawyer must be, as well."[32] The legal needs of the public must be satisfied. To an extent, the public at large must be educated so that individuals can make some of their own legal decisions (for instance, traffic laws). And, to an extent, legal needs must be satisfied by paralegals (for instance, social workers) and by sublegals (for instance, a legal secretary who can prepare simple complaints), as well as by lawyers.

The question of whether legal knowledge should be given non-lawyers for use in an occupational setting has already been answered in the affirmative and the relevant question now is how shall legal knowledge be distributed, and by whom?

Lawyers will have a major role to play, if they so choose, in the initiation and implementation of plans concerning the distribution of legal know-how. They will make the ultimate choice of how law schools are used. They will have a dominate voice in saying how their legal secretaries and clerks are trained both before they begin work and on the job. In certain areas – the training of securities salesmen or real estate brokers, for example – lawyers may find it too costly to develop a training program as good as those already provided by companies, trade or professional associations, or universities.[33]

It is our hope that lawyers and law schools will involve themselves in the

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[31] *See* Balbach, *Title Insurance and the Lawyer*, 52 A.B.A.J. 65 (1966).

[32] Llewellyn, *supra* note 2, at 107.

[33] For examples of sophisticated, self-teaching programmed texts in insurance and security sales, see LIFE LICENSING: FAST TRACK and SECURITIES LICENSING: FAST TRACK (both by Pictorial Publishing Co.). Many life insurance and mutual fund companies have similar texts which allow the great majority of their trainees to pass state licensing examinations. Companies have such good materials that trainees seldom have to depend on proprietary schools.

Proprietary schools are more popular in real estate, but even here their use may be limited. The basic text for the real estate licensing exam in Colorado is COLORADO REAL ESTATE COMMISSION, COLORADO REAL ESTATE MANUAL. The Colorado real estate industry is an example of an occupation attempting to get university courses and status. Some texts have been developed for use in university courses including M. UNGER, REAL ESTATE (3rd ed. 1964); R. KRATOVIL, REAL ESTATE LAW (1964); H. FUSILIER, LEGAL ASPECTS OF REAL ESTATE BROKERAGE (1969).

processes of determining how legal services will be provided and in upgrading the quality of legal services. By upgrading and differentiating the work done by legal secretaries and other sublegals, lawyers could provide better and cheaper legal services. (Lee Turner, Chairman of the recently formed A.B.A. Committee on Lay Assistants for Lawyers, has demonstrated the potential for lay assistants by hiring over twenty of them in his three-attorney firm.[34])

Lawyers could also contribute to occupations not controlled by lawyers. By providing legal training for paralegals, attorneys could serve the public by supplying competent personnel who could perform some of the less complex legal tasks at less expense and in more available settings. Attorneys could also serve themselves by retaining control of the most interesting and lucrative jobs. Perhaps by turning the law school into a true College of Law, lawyers could train paralegals and eventually insure their high quality. Saying the same thing in another way, by cooperating with some paralegal occupations in the training function, lawyers might eventually co-opt or gain substantial control over paralegals.

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[34] UNIVERSITY RESEARCH CORP., PARAPROFESSIONALS IN LEGAL SERVICE PROGRAMS: A FEASIBILITY STUDY 73 (1968).

Section III

UNFILLED LEGAL NEEDS AND TRENDS IN FUTURE DEMAND

A. Unfilled Legal Needs

Despite a lawyer population in this country which has more than kept pace with the general population for the past two decades,[1] the legal profession finds itself increasingly demeaned in the public esteem, attacked for its inability to respond to critical needs, and its work pre-empted by many who are not lawyers.[2] Assuming that today's lawyers are probably better

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[1] **TABLE**

United States Population Per Lawyer, 1951-1966

Year	Number of lawyers	People per lawyer
1951	221,605	696
1954	241,514	672
1957	262,320	653
1960	285,933	632
1963	296,069	627
1966	316,856	621

AMERICAN BAR FOUNDATION, THE 1967 LAWYER STATISTIAL REPORT 11 (F. Weil, ed. 1968) [hereinafter cited as STATISTICAL REPORT].

[2] *See e.g.*, M. BLUM, THE TROUBLE WITH LAWYERS (1965); N. DACEY, HOW TO AVOID PROBATE (1967); CONFERENCE PROCEEDINGS: NATIONAL CONFERENCE ON LAW AND POVERTY (1965); Llewellyn, *The Bar's Troubles and Poultices – and Cures?*, 5 LAW & CONTEMP. PROB. 104 (1938).

trained and more fully equipped to handle the traditional work of a private practitioner than their predecessors, the most plausible explanation for this paradox would seem to lie in an unprecedented growth of legal needs far outstripping population growth. These unmet needs can be documented statistically, especially the legal needs of the less affluent. (While estimates of the unfilled needs of the poor for legal services vary considerably, the immensity of the problem is hardly open to question.)

Brownell, using Earl Koos' 1949 study, concluded that "only about three of five families in this economic group [the poor] having legal problems recognized the need for help and only two of five got the needed services."[3]

Recent estimates of the number of poor people "needing subsidized service range from 10 million to 35 million to perhaps 40 million."[4] The American Bar Foundation estimates that there are 14 to 20 million cases a year involving poor people who need legal counsel.[5] The cost of providing legal services for that many cases, even at the present very low cost of $30 – $50 per case would be $400 million to $600 million. And at the time of that estimate, the Legal Services Program was receiving only $30 million.[6]

Efforts have been made to develop ratios of the number of poor persons with legal problems to the total poor population. These ratios range from 7 cases to 28 cases per 1,000 poor people.[7] Even using the conservative 18:1,000 ratio, free legal services were reaching only 10 percent of those needing it in 1965, because the national ratio was then about 2 cases serviced for every 1,000 people.[8]

According to Robb, "while an army equivalent to 2,300 full-time lawyers [less than 1% of the nation's lawyers] is now serving more than one million [poor] clients annually, [yet] '. . .only 15% of the legal needs of the country's poor are being adequately served." The rural poor appear to be especially needy. "Although 40% of the nation's poverty reportedly exists in rural areas, only 20% of OEO's funds for legal services have been expended there."[9]

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[3] E. BROWNELL, LEGAL AID IN THE UNITED STATES 57 (1951), citing E. Koos, The Family and the Law, (mimeographed, by the Survey of the Legal Profession, 1949).

[4] UNIVERSITY RESEARCH CORP., PARAPROFESSIONALS IN LEGAL SERVICE PROGRAMS: A FEASIBILITY STUDY (1968) [hereinafter cited as PARAPROFESSIONALS]. This section of our report relies heavily on PARAPROFESSIONALS 3-11.

[5] Johnson, Jr., *Introductory Address,* in PROCEEDINGS OF THE HARVARD CONFERENCE ON LAW AND POVERTY 1, 3 (1967).

[6] *Id.*

[7] BROWNELL, *supra* note 3, at 19; C. Silver, The Imminent Failure of Legal Services for the Poor or Why and How to Limit the Caseload, 21 (unpublished, June 15, 1968), cited in PARAPROFESSIONALS 8.

[8] Carlin & Howard, *Legal Representation and Class Justice,* 12 U.C.L.A.L. REV. 381, 410, 408 (1965).

A study by the University Research Corporation for the Office of Economic Opportunity,[10] found not only that the needs of the poor were not being met, but that "the situation is growing worse." This study also found that "there is evidence to suggest that even if all of the American lawyers now in private practice devoted their time to the poor, utilizing present operating methods, justice would still be a highly rationed commodity for large numbers of American citizens."[11]

A survey in New Haven, Connecticut, describes the extent of unfilled need for legal services:

> . . .almost 31% of the persons interviewed in the summer and fall of 1966 were eligible for free legal service. More than half of the respondents had never been to a lawyer – including about 55% of those who were eligible for free service. More than 18% of the respondents said that they had experienced legal problems in the past without taking them to a lawyer. Almost 93% of the respondents said that they would take their future legal problems to a lawyer, but only 34% of those with unsolved problems at the time of the interview said that they would seek legal counsel for that particular problem.[12]

A California survey found that only about 30% of the poor actually knew an attorney, in contrast to better than 75% of the upper-income group surveyed.[13]

David Caplovitz's study of poor neighborhoods in New York City found that in response to the question, "Where would you now go for help if you were being cheated by a merchant or salesman?", sixty-four percent said they did not know, while less than 5% mentioned legal aid. Of families who reported they *had* been cheated, half did nothing at all, 40% tried to deal with the merchants themselves, and only "9% sought professional help." Most of these probably did not seek legal help.[14]

In his 1968 study, *Legal Needs of the Poor in the City of Denver,* Professor Gresham M. Sykes found that over *two-thirds of the legal problems*

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[9] Robb, *HEW Legal Services: Beauty or Beast?,* 55 A.B.A.J. 346, 347 (1969).

[10] PARAPROFESSIONALS.

[11] *Id.* at 1.

[12] Mucci, et al., Survey on Legal Services in New Haven, 1 (New Haven Legal Assistance, 1967), cited in PARAPROFESSIONALS 6.

[13] Carlin & Howard, *supra* note 8, at 427.

[14] D. CAPLOVITZ, THE POOR PAY MORE 175, 171 (1962).

of the poor in Denver were both unrecognized and untreated.[15] Forty-three percent of the households canvassed reported felt needs, and 78% of these went to a lawyer.[16] However, a panel of lawyers found that an additional 19% of the households had legal needs, exclusive of domestic relations problems, that were not recognized by those households.[17] In addition, while only 173 people in the sample of 402 reported felt legal needs, the panel of lawyers found 603 legal needs.[18] Thus, according to Sykes: "if we generalize from the sample to the population of households from which it was drawn, this would suggest that in the 13,000 households in the two neighborhoods there would be approximately 5,400 felt legal needs of which 4,200 would be recognized as such by lawyers. In addition, there would be another 14,000 legal problems recognized by lawyers but which the people themselves were unaware of."[19] The data also indicated that legal problems respecting administrative and criminal processes are especially likely to go unrecognized by heads of households.[20]

Though it may seem paradoxical to those aware of the crushing legal problems of the poor, they may not have fared too badly in comparison with their slightly more affluent middle-class neighbors. There are strong indications that increased education and income lead to more legal problems. Sykes found that 60% of households with no income and 51% of those with incomes of less than $75 weekly had no legal problems. However, only 22.7% of households with $100 to $150 weekly income, and only 16.7% of those making over $150 weekly, were without any legal problems.[21] Sykes hypothesized that one reason for the positive correlation between income and legal problems is that money leads to greater participation in society, which leads to more legal problems. Another possible reason is that society has identified and legitimated the complaints and conflicts of the rich, but not the poor. It has been difficult for poor people to establish any new "rights" to anything. Until a person has the right to something, the denial of that something is not usually recognized as a legal problem. Thus, the poor may be denied legal problems by definition.

Of persons with nine or more years of schooling, 69% had one or more legal problems, compared with 54% of those with less than eight years of school.[22] Better educated and more affluent people not only have more legal problems, they are better able to recognize which problems can be solved by a lawyer. Sykes's study indicated that poor people often did not recognize that problems with workmen's compensation, unemployment benefits, and welfare benefits might be alleviated with the help of a lawyer.

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[15] G. Sykes, Legal Needs of the Poor in the City of Denver 28 (mimeographed, to be published in 4 L. & SOC. REV. No. 2, Nov., 1969).

[16] *Id.* at 24-25.

[17] *Id.* at 28.

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.* at 34. *See also* Schwartz, *Foreword: Group Legal Services in Perspective,* 12 U.C.L.A.L. REV. 279, 286 (1965).

There is little data rigorously measuring the actual needs of the middle class for legal services. We are confident that further research would confirm our belief, corroborated by the Brownell study, that the need for better legal services "is at least as pressing with respect to the middle income families [as with the poor]."[23] Brownell found that four out of five poor families have legal problems.[24] Sykes implies – with his data on the direct correlation between education, income, and legal problems that those not far above the poverty line are probably beset with more legal problems than the poor, but cannot solve many of them when private attorneys charge $25 per hour.

B. Social Trends and their Implications for Legal Needs

Current unfilled legal needs are great, but certain trends evident in American society will further increase the *demand* for legal services. Although virtually all firm forecasts, such as developments in the technology of transportation or space explorations, have legal implications not too difficult to draw, our attention here is directed to those trends that have the closest and clearest bearing on the legal needs of the "ordinary" citizen. We have drawn on recent, but already standard, sources for many of the forecasts discussed below.[25]

All forecasting, of course, rests upon certain relevant assumptions. It is useful to distinguish between those elements of the future that are highly likely and subject to little deliberate (and particularly centralized) control, and those that are subject to deliberate creation through explicit planning and implementation. For example, the prospective size and age-sex composition of the population must be taken nearly as a given, being the cumulative result of individual life-styles and decisions. Technological change has often been taken as an autonomous force, but we increasingly recognize that technological applications are deliberate decisions in resource allocation, and those policies could be changed.[26] With respect to creating the future, deliberate change will certainly continue to increase in importance. Thus legal, administrative, and similar changes will be recognized as worthy attempts to shape the social universe and not simply as palliative. And "fate," "chance," and even precedent will be decreasingly accepted as an excuse for failure to approximate ideal standards.

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[22] Sykes, *supra* note 15, at 33.

[23] BROWNELL, *supra* note 3, at 58.

[24] *Id.*

[25] TOWARD THE YEAR 2000: WORK IN PROGRESS (D. Bell ed. 1968); H. KAHN & A. WIENER, THE YEAR 2000: A FRAMEWORK FOR SPECULATION ON THE NEXT THIRTY-THREE YEARS (1967); W. MOORE, SOCIAL CHANGE (1963); R. MACK, TRANSFORMING AMERICA (1967); C. ALMON, THE AMERICAN ECONOMY TO 1975 (1966); D. MICHAEL, THE NEXT GENERATION (1965); W. MOORE, ORDER & CHANGE: ESSAYS IN COMPARATIVE SOCIOLOGY (1967), (esp. Part IV, *Forecasting the Future):* INDICATORS OF SOCIAL CHANGE: CONCEPTS & MEASUREMENTS (E. Sheldon & W. Moore eds. 1968).

Ideal standards are themselves subject to change. Thus, there appears to be a clear trend toward extension of the *common* rights of citizenship without respect to ability to pay in the market. These will include (a) effective minimum income maintenance, at some level,[27] but also (b) health services, and (c) probably legal services.[28] (Inevitably, new "rights" will appear, and some will require legal services.) Rights will also include (d) effective political participation,[29] and (e) open opportunities for access to essentially competitive systems, such as education.[30] "Equal justice" should serve blue-collar and lower-paid white-collar workers, as well as indigents.[31]

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[26] W. MOORE, ORDER & CHANGE, *supra* note 25.

[27] *See, e.g.*, President Nixon's proposed welfare legislation of 1969, which includes a provision for a minimum income.

[28] In fact, the notion of minimum health and legal services for the poor has already been institutionalized by the federal government in the Office of Economic Opportunity. O.E.O. began funding Neighborhood Health Centers in June, 1965, and, as Ladinsky and Pipkin point out in their draft report, Professional Obstacles in the Provision of Legal and Medical Services to the Poor (undated mimeograph), 32 Neighborhood Health Centers were operating by August 1968 and sixteen more were funded. The Legal Services Program was established as a semi-autonomous unit under the Community Action Program in the fall of 1965 and by 1968 the program had a budget of $35.9 million. Medicare, *Social Security Amendments of 1965*, Pub. L. No. 89-97, 79 Stat. 286 (1965).

[29] The trend toward demand for such a right is more elusive, but seems to be emerging. For example, as Ladinsky and Pipkin report, the Legal Services Program Evaluation Manual states that good programs should serve as advocates for the poor in the political arena by representing neighborhood associations before zoning commissions, city councils, and the like. Equal protection of the laws implies the poor should have the same degree of concerned advocacy – and of effective political representation – that other citizens have long enjoyed. *Id.*

Baker v. Carr, 369 U.S. 186 (1962), demonstrates the Supreme Court's concern with political representation. McCloskey, *Foreword: The Reapportionment Case*, in THE SUPREME COURT 1961 TERM, 76 HARV. L. REV. 54, 59, 61 (1962), points out that the one man-one vote ruling had to hurdle and limit the "political question" doctrine that prevented the Courts from taking jurisdiction and considering the problems before. Colegrove v. Barrett, 330 U.S. 804 (1947). *See also* Colegrove v. Green, 328 U.S. 549 (1946). See SYMPOSIUM ON BAKER V. CARR, 72 YALE L.J. 7 (1962).

We shall set down here some social trends under convenient rubrics, and indicate briefly their implications for new or expanded legal services.

Population and Urbanization: Population growth is a major factor in the increased need for services.[32] Fortunately, the ratio of population to lawyers has decreased somewhat in the last twenty years.[33] The number of old and young people is large, and they have problems at least partially distinct from those of middle aged adults. These distinctive problems need special attention.[34] Both the move to the cities and the correlative move to the suburbs may be expected to continue, but at a slowing rate as the total urban percentage increases.[35]

Growing population necessitates at least a proportionate growth in the need for governmental regulation and legal services. Urban concentration leads to more problems resulting from increased personal, business, and governmental relationships. Over time, our society is faced with more people with more power for destruction and more property to destroy, crowded together in increasingly tense and densely packed cities.

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[30] Schueler, *Education in the Modern Urban Setting,* 30 LAW & CONTEMP. PROB. 168 (1965) outlines the increase in compensatory education programs designed to help disadvantaged students in public schools. Experiments with junior colleges and community colleges are further examples of the desire to open and equalize opportunities for access to education.

[31] The adage that the rich have lawyers, the poor have legal aid, but those in between have little or nothing is too true. *Supra* Section III A. *See infra* note 69, for some representative articles dealing with providing better legal services to middle and lower-middle income groups.

[32] U.S. population rose from 152 million in 1950 to 180 million in 1960, an increase of 19%. U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE U.S.: 1967, 5(1967). [hereinafter cited as ABSTRACT].

[33] *See supra* note 1. The ratio of population to students graduating from law school has begun to decrease only in the last several years. STATISTICAL REPORT 28.

[34] Juvenile courts are an institutional recognition that the legal problems of youth are different from those of mature adults and should be treated distinctly. Comment, *Confessions by Juveniles,* 1 MANITOBA L.S.J. 291 (1964-65); *Symposium – Law Relating to Infants,* 5 W. ONT. L. REV. 96 (1966); Fagan, *Obscenity Control and Minors - The Case for a Separate Standard,* 10 CATHOLIC LAW 270 (1964); *Symposium – The Child and the Courts,* 53 WOMEN.LAW J. 43 (1967) present more examples of the awareness. Criminal problems are disproportionately found among young men. 60% of all crimes are committed by men under 34. ABSTRACT 154.

Similarly, aged citizens, faced with limited mobility and finances, have legal needs that diverge from those of younger adults. The need of the aged for counsel in dealing with governmental agencies is only the most obvious need. *Symposium: Law and the Older Citizen,* 53 WOMEN.LAW J. 84 (1967) discusses some other problems.

[35] ABSTRACT 15–16, 10.

Section III

Traffic control in the cities and on the highways linking them also presents problems of growing magnitude.[36] Here some combination of engineering and administrative solution seems indicated, including new approaches to tort liability and negligence and to insurance settlements.[37] And as more and more of the land is built on or paved over, new rules governing access to open spaces and their use will become necessary.[38] Since cities, their factories, their sewage and waste, and their automobiles are the prime source of air and water pollution, new rules and rule-enforcers dealing with "environmental control" become imperative.[39]

Organization: Population growth and urbanization has led to an increasingly organized social order, not only where people work but also in the pursuit of hobbies, other expressive activities, and in the collective represen-

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TABLE

U.S. Population Growth and Urban Concentration: 1930-66.

(Population x 1,000,000)					**% increase**			**% urban**			
1930	1940	1950	1960	1966	1930-40	1940-50	1950-60	1930	1940	1950	1960
122.8	131.7	50.7	179.3	195.8	7.3	14.5	18.5	56.2	56.5	64.0	69.9

[36] *See, e.g.*, Ginzburg, *Transportation Problems of the Megalopolitan*, 12 U.C.L.A.L. REV. 800 (1965); Smerk, *Hope for Mass Transportation*, 11 BUS. HORIZONS 63 (1968).

[37] Many authors have called for a reform in the administration of tort law, especially with respect to automobile accidents. The Keeton-O'Connell plan is most often cited, but is by no means the only reform that has been suggested. R. KEETON & J. O'CONNELL, BASIC PROTECTION FOR THE TRAFFIC VICTIM: A BLUEPRINT FOR REFORMING AUTOMOBILE INSURANCE (1965). The following articles are examples of the discussion: Morris, *Negligence in Tort Law – With Emphasis on Automobile Accidents and Unsound Products*, 53 VA. L. REV. 899 (1967); Marryott, *Tort System and Automobile Claims: Evaluating the Keeton-O'Connell Proposal*, 52 A.B.A.J. 639 (1966); James, *The Future of Negligence in Accident Law*, 53 VA. L. REV. 911 (1967); Franklin, *Replacing the Negligence Lottery: Compensation and Selective Reinbursement*, 53 VA. L. REV. 774 (1967).

[38] *See, e.g.*, Volpert, *Creation and Maintenance of Open Spaces in Subdivisions: Another Approach*, 12 U.C.L.A.L. REV. 830 (1965).

[39] Environment control has only recently begun to receive the attention it merits. The following articles describe the problems of air and water pollution in urban areas and outline some current and potential corrective measures: Edelman, *Federal Air and Water Control: The Application of the Commerce Power to Abate Interstate and Intrastate Pollution*, 33 GEO. WASH. L. REV. 1067 (1965); Bryan, *Water Supply and Pollution Control Aspects of Urbanization*, 30 LAW & CONTEMP. PROB.176 (1965); Comment, *The Air Quality Act of 1967*, 54 IOWA L. REV. 115 (1968)

tation of interest, which may be very temporary or long term. Continuing, and perhaps increasing, pluralism in American society is very likely to produce a growing number of associations aimed at preserving distinctive ethnic heritages, providing an outlet for currently shared "cultural" interests, or serving as a mechanism for representation of common political or economic interests.[40] The formation of voluntary associations, some of which become legal entities, is often left to laymen, but those organizations often include lawyers in their governing boards, or discover, perhaps belatedly, their need for legal counsel in acquiring property, representing common interests, or claiming tax exemption. In the future, more and more such associations will be formed, and some of the problems faced may well require some kind of continuing legal, or paralegal counsel, even if only on a part-time basis.

Government: Due to rising population and increasing urbanization, government – especially on the state and local level – has grown tremendously and is continuing to grow.[41] Direct government payments now constitute 40% of the total personal income in the United States.[42] Beyond the payments, government now defines, to a large extent, economic and social values. This process can be seen in the granting or withholding of occupational or franchise licenses, or in the placement of the "poverty line" which determines whether one is eligible for welfare assistance.[43] Inevitably, as government control is extended over an area, laws and regulations are instituted, and lawyers are summoned to interpret and dispute governmental decisions.

Since size almost invariably leads to complexity of organization, it is not surprising that governmental agencies have a host of administrative problems, and most would agree that those are being poorly solved. But the citizen, too, encounters administrative problems, for he deals with a great variety of representatives of essentially impersonal agencies, public and private.[44] The

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[40] *See* W. MOORE, *Voluntary Associations*, in MAN, TIME & SOCIETY (1963).

[41] Reich, *The New Property*, 73 YALE L.J. 733 (1964).

[42] *Id.* at 737. Reich notes the 1961 total government expenditures as $164,875,000,000 into which is divided total personal income of $416,432,000,000.

[43] *Id.* at 734-35.

[44] Thorkelson, Weiss & Sparer, *The Lay Advocate*, 43 U. DET. L.J. 493, 500-10 (1966), vividly portrays the difficulties a citizen, especially a poor citizen, may face in dealing with impersonal, bureaucratic agencies. The citizen may often find himself rejected by the agency that is supposed to help him. Sources cited earlier in our listing of legal relationships which a person may encounter also document how complex – even incomprehensible – these relationships may be. *Supra* Section I at note 49.

See P. NONET, ADMINISTRATIVE JUSTICE: ADVOCACY AND CHANGE IN A GOVERNMENT AGENCY 104-121 (1969) for an excellent discussion of the lawyer's well-to-do may have the "influence" to get things done, and sometimes the less affluent can get help from local units of a political party, but many have no such recourse.[45]

The creation of new cities provides a demand for administrators, politicians, and planners.[46] Meanwhile, the question of whether cities are governable has lost its humor. (a) Problems arise out of the juxtaposition of income and ethnic groups that have little in common.[47] (b) New demands for political participation are difficult or impossible to accommodate within the structure of urban political parties and administrative agencies.[48] (c) Archaic jurisdictional boundaries make solutions to problems that are

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role in workmen's compensation.

Many studies have chronicled the indignities to which welfare recipients are subjected by public assistance agencies – midnight raids, restricted mobility and choice of purchases, loyalty oaths, and the like. A collection of the best of these studies includes three articles by Charles Reich: Reich, *Midnight Welfare Searches and the Social Security Act*, 72 YALE L.J. 1347 (1963); Reich, *The New Property*, 73 YALE L.J. 733 (1964); Reich, *Individual Rights and Social Welfare: the Emerging Legal Issues*, 74 YALE L.J. 1245 (1965); plus Handler, *Controlling Official Behavior in Welfare Administration*, 54 CALIF. L. REV. 479 (1966); Stone, *Twentieth Century Administrative Explosion and After*, 52 CALIF. L. REV. 513 (1964).

[45] The actions of city political machines with respect to the poor are sometimes praised, sometimes condemned, at least partly because the party machines have varied widely. After studying a Chicago urban renewal project, Plager & Handler, conclude that the Democratic machine, while protecting itself, did not necessarily act contrary to the interest of the inner-city dwellers.

Plager & Handler, *Politics of Planning for Urban Development: Strategies in the Manipulation of Public Law*, 1966 WIS. L. REV. 724.

In *Symposium – Urban Problems and Prospects*, 30 LAW & CONTRMP. PROB. 1 (1965) at 40, Daniel R. Grant alludes to the current re-evaluation of old-style city machines. Some studies have suggested that the machines were not so monolithic or hierarchical as had been imagined, and that they were – and continue to be in some instances – fairly responsive to the needs of many urban poor.

[46] *Symposium – New Towns*, 1965 WASH. U.L.Q. 1 (1965) describes many of the skills required in the development of new towns. Hirsh, *About Tormorrow's Urban America*, 12 U.C.L.A.L. REV. 880 (1964-65) is a more legal-oriented look at the question of individual freedom and privacy in the midst of an ever more complex and interdependent urban America.

[47] Local school systems often become the most obvious battleground of such divergent interests, especially with respect to race. The literature on schools and race is voluminous – and still growing; Schueler, *supra* note 30, at 164-66, shows that battles over school integration are reflections of conflicting interests of varying class and ethnic groups in a complex and changing urban environment.

[48] Because political parties and administrative agencies have not responded, aggrieved parties have often had to rely on the courts for the vindication of their rights. Baker v. Carr, 369 U.S. 186 (1962) and other reapportionment decisions provide one example. The right to assemble and to dissent, particularly against the war in Vietnam, is another. Brown v. Board of Education, 347 U.S. 483 (1954), and subsequent integration decisions

common to entire metropolitan areas even more difficult.[49] All of this indicates a demand for mediating skills in dealing with intergroup tensions and skills in creating new political and administrative structures.[50] Even the forms and tactics of law enforcement are likely to demand a variety of new technical and professional occupations.[51]

Education: Trends toward rising minimum and median levels of education, including growing proportions of college and graduate-school products will certainly continue.[52] In consequence, sophistication in dealing with legal

TABLE

Years of School Completed, by Color, 1950-1966

		% Completed four years of High School or More	**% Completed four years of College or More**	**Median School Years Completed**
1950 (age 25 or older)	White	35.4	6.4	9.7
	Non-white	13.2	2.2	6.8
1960 (age 25 or older)	White	43.2	8.1	10.9
	Non-white	21.7	3.5	8.2
1966 (age 25 or older)	White	52.2	10.4	12.1
	Negro	27.8	3.8	9.1
1966 (persons 25-29 years old)	White	71.0	14.0	12.5
	Non-white	50.4	8.3	12.0

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are perhaps the best example of political parties and agencies defying the courts even after clearcut decisions.

[49] Grove, Jr., *Metropolitan Planning?*, 21 U. MIAMI L. REV. 60 (1966), points out that traditional city governments have been unable to keep up with the demands placed on them by rapid growth. Special service districts have been one of the measures used to meet the crisis. *Id.* at 68-69. The result has been, for most cities, a tangle of city, county and special district jurisdictions making effective metropolitan action difficult and democratic control nearly impossible.

[50] Plager & Handler, *supra* note 45, discusses five urban renewal projects and shows clearly that, in four of the projects, existing procedural provisions were inadequate. Local governments either had their options foreclosed by, or became partisans of, private

matters will increase, as will the quest for technical help. This also means, however, that those that drop out for any reason are in special need of (a) educational "reconstruction," if feasible, and (b) in any event, education in rights and opportunities that the better educated take for granted.[53]

The major public commitment to education at all levels is raising new issues relating to the quality of instruction and particularly relating to the governing of schools and colleges and the rights of parents and students in dealing with administrative rules and procedures.[54] "School-house lawyers" may come to rival "jail-house lawyers" in representing the aggrieved.[55]

Affluence: After discounting inflationary trends, rising real levels of income are highly probable.[56] This means, among other things, a growing proportion of the population with "discretionary income," and continued

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or semipublic, developers. *Symposium – Urban Problems and Prospects. Supra* note 45, presents many views on the administrative tangle of city governments and their inability to cope with the pressures on them. It also makes suggestions for reorganizations.

[51] *See, e.g.*, Dash, *Crime, Law Enforcement and Justice: the Prospects for Reform,* 26 FED. B.J. 224 (1966); Schmidt, *Crime and the New Justice*, 40 CALIF. S.B.J. 734 (1965); Kennedy, *Crime in the Cities: Improving the Administration of Criminal Justice*, 58 J. CRIM. L. 142 (1967).

[52] ABSTRACT 114, 116. In 1962, 28% of all persons over 25 in the U.S. had completed four years of high school. This is projected to increase to approximately 42–43% of the same age group in 1985. Approximately 9% had completed four or more years of college in 1962 and this percentage is expected to increase to approximately 14–15% in 1985. ABSTRACT 113.

[53] *Compare with* Shore & Mannino, *The School Dropout Situation: An Opportunity for Constructive Intervention*, 29 FED. PROB. 41 (1965).

[54] See Beaney, *Students, Higher Education, and the Law*, 45 DENVER L.J. 511 (1968); Schueler, *supra* note 30; Van Alstyne, *Student Academic Freedom and the Rule-making Powers of Public Universities: Some Constituional Considerations*, 1 L. IN TRANS. Q. 1 (1965); *Symposium – Student Rights and Campus Rules*, 54 CALIF. L. REV. 1 (1966).

[55] *See Symposium – Legal Aspects of Student-Institutional Relationships*, 45 DENVER L.J. 497 (1968). *See* Madera v. Board of Education, 267 F. Supp. 356 (S.D.N.Y. 1967), *reversed*, 386 F. 2d 778 (2d cir. 1967), *Cert. denied*. 390 U.S. 1028 (1968). *See also*, 42 N.Y.U.L. REV. 961 (1967). The federal district court held that a student was entitled to counsel at a public school disciplinary hearing, but was reversed.

See Comment, *Regulated Practice of the Jailhouse Lawyer*. 25 WASH. & LEE L. REV. 281 (1968).

[56] The per capita personal income, discounting inflationary trends and deducting personal tax and nontax payments to general government, rose from $1,883 in 1960 to $2,214 in 1965. ABSTRACT 321. Unless a major recession occurs, this trend is likely to continue.

[57] From 1950 to 1965, the portion of the Gross National Product spent on "Goods Output" and on "Structures" doubled, whereas that spent on "Services," the only other "major type of product," trebled. *Id.* at 319.

disproportionate growth in the demand for services.[57] Some associated trends are also worthy of note. Increasing prosperity means increasing property subject to damage, destruction, protection, and transfer.[58] Increasing residential mobility has similar implications for real estate transactions.[59] The "credit society" implies a vast contractual network, and also a possible expansion and reorganization of collection procedures, simplified bankruptcy procedures, and perhaps "claims adjusters" for debts.

Occupation: A steady up-grading of the occupational structure of the labor force will continue, with technical and professional categories growing at disproportionate rates.[60] This trend will continue to place in jeopardy the regular livelihood of those with minimal education and skills and lead to the increased importance of vocational counseling and adult retraining (including creation of new careers).[61] For those in upgraded occupations, accompanied by higher levels of education and income, the demand for services will increase. And some of those services will be novel. Most persons will be working in one form or another of public or private bureaucracy. But technical employees will tend to question the character of line authority and the equity of rules that may be regarded as arbitrary.[62] Therefore something like a judiciary may be expected in administrative organizations, and "due process" notions may well be extended to these systems of private government.[63]

Technology: Virtually any technical change results in some rearrangement in social relations and organization, and therefore in rights and responsibilities. One problem only will be noted here, the invasion of privacy, not only through electronic eavesdropping ("bugs"), but also through computerized dossiers.[64] Both technical and administrative counter-measures are likely to be in demand.

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[58] Business expenditures for new plants and equipment in the continental U.S. increased from $35.68 billion in 1960, to $60.63 billion in 1966. Personal expenditures for clothing, accessories, and jewelry grew from $33.0 billion in 1960 to $43.4 billion in 1965. *Id.* at 323, 497.

[59] From March 1964 to March 1966, 74.5 million Americans moved to a different house in the United States. *Id.* at 34. The number of mobile homes purchased increased from 103,700 in 1960 to 217,300 in 1966. *Id.* at 724.

[60] Whereas the experienced civilian labor force grew by 14.8 per cent between 1950 and 1960, the number of professional, technical and kindred workers grew by 50.2 per cent in the same period. *Id.* at 232.

[61] Levine, *Training and Retraining in American Industry: An Appraisal of the Evidence as an Ameliorative for Unemployment,* 15 LAB. L.J. 643 (1964).

[62] W. MOORE, THE CONDUCT OF THE CORPORATION 151-66 (1962)

[63] Bonfield, *Representation for the Poor in Federal Rulemaking,* 67 MICH. L. REV. 511, 533-36 (1969); Reich, *The New Property, supra* note 42, at 783-85. But *compare with* Handler, *supra* note 44.

[64] *See* Comment, *A Proposal for Legislative Control of Electronic Surveillance,* 43

C. The "Justice Package" and its Components

Increased demand for legal services will have both quantitative and qualitative components. The foregoing trends will increase legal needs by increasing market demand for legal functions presently performed for at least part of the population. Yet these increases will be matched by qualitative increases due to the realization that justice requires that all citizens be provided more than the traditional services associated with lawyering. The "justice package" will consist not only of the extension of traditional services to those formerly denied them, but also of the establishment of new rights to legal services for all citizens, rich and poor.

The following discussion of the "justice package" must take place within the realization that both for political and philosophical reasons, rights should not be established for the poor and withheld from the nearly poor. Philosophically, equal justice must apply to all – the rich, the middle class, and the poor. Politically, it is unlikely that he who helps only the very poor will continue in power.

The "justice package" should also illustrate the great variety of services that lawyers need to perform in our society. The fact that many of these services are poorly performed, if at all, for most of the population is one of the most persuasive bits of evidence that the legal needs of the middle class are being shirked.

Certain elements of that package are well known, unsophisticated, and relatively easy to render. Thus, the preparation and trial of divorces constitutes a significant share of legal business, is amenable to routine handling, but is still relatively expensive for the amount of legal expertise required.[65] The same is true for the so-called consumer bankruptcy and a host of small claims, including tort, contract, and real property cases of no great complexity.[66] In the latter instances, the amounts in issue are frequently less than the legal fee required.

The growing recognition that a minimum level of legal services ought to be assured every citizen moves beyond mere legal assistance in filing documents at the crisis points in his life, such as divorce or bankruptcy. Once the normative conception of a minimum level of legal services is accepted, the contents of such a "justice package" must be defined. The final formulation

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IND. L.J. 130 (1967); Miller, *Personal Privacy in the Computer Age: The Challenge of a New Technology in an Information-Oriented Society*, 67 MICH. L. REV. 1091 (1969).

[65] *See also* Sykes, *supra note* 15, at 64-65. PARAPROFESSIONALS 66-67, 89-90, 133-141.

[66] PARAPROFESSIONALS 90-97, 142-158.

must, of course, be decided in political and legal processes. Several possible conceptions can, however, be cited.

One conception would be based primarily upon assuring that the poor and middle class families with incomes below a fixed amount (or some sliding income scale depending on the amount and type of services) receive traditional legal services considered as part of lawyering – counseling, negotiating, persuading, research/learning, and recording/drafting – when such services will substantially assist in resolving their problems.[67] As a minimum, this conception would seem to require competent representation of eligible recipients in any adjudicatory arena of legal process, criminal or civil.[68] Since a citizen's rights cannot be adequately protected in such arenas without advocacy and representation, and since only lawyers are permitted to perform such functions, justice seems to require that representation be provided to all citizens unable to pay for it.

A similar right might be extended to many other dispute settlement processes.[69] The vast majority of all contract, tort, and property claims are settled informally, often with lawyers or other experienced negotiators representing one side against inexperienced laymen. The poor and middle class citizen unable to retain the services of a competent negotiator in settlement matters is at a severe disadvantage.[70] Again, in the interest of justice, the services of competent negotiators should be assured all citizens unable to pay for them. Further, a right to be represented by a competent negotiator might well be extended to eligible claimants with respect to private claims asserted against administrative and executive agencies – claims for workmen's compensation, public housing, unemployment compensation, and the like.

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[67] *See* Q. JOHNSTONE & D. HOPSON, JR., LAWYERS AND THEIR WORK (1967) for one analysis of the "traditional lawyer's services." Also *see infra,* Appendix III.

[68] O'Brien, *Why Not Appointed Counsel in Civil Cases? The Swiss Approach,* 28 OHIO S.L.J. 1 (1967).

[69] The legal profession recognizes the necessity of representation in certain areas, but both the scope of service and of income eligibility need further expansion. Legal aid societies provide free legal services to the poor, and most large cities have public defenders for those accused of felonies. Many articles have called for the expansion of such services for the poor and the inclusion of needy middle-class citizens unable to qualify for present legal aid. These include: Reisler, *Legal Services for All – Are New Approaches Needed,* 39 N.Y.S.B.J. 304 (1967); Pincus, *Legal Services for Persons of Moderate Means,* 7 L. OFF. ECON. & MAN. 235 (1966); McAlpin *Legal Services to the Poor,* 20 ARK. L. REV. 255 (1966); Comment, *Providing Legal Services for the Middle Class in Civil Matters: the Problem, the Duty, and a Solution,* 26 U. PITT. L. REV. 811 (1965).

[70] An obvious example of this is insurance. Uninformed citizens, in automobile or other insurance claims, must deal with experienced adjusters. H. ROSS, SETTLED OUT OF COURT (to be published by Aldine Pub. Co. in 1970) provides a provocative discussion of this. Again, the brunt of the problem falls most heavily on the poor, as the wealthy can afford to hire representation. Similar services might be provided to poor persons through an expansion of legal aid and/or the creation of new paralegal specialties.

Finally, a case can be made for providing comprehensive counseling and legal check-up services for eligible recipients.[71] Such services are preventive in nature and, when adequately performed, help clients avoid many legal difficulties which they might otherwise encounter. In the long run the cost of providing such services is cheaper than waiting to deal with troubles when they arise. Financial counseling (consumer credit and other property transactions, and debt management – including bankruptcy) and domestic relations matters would seem to be essential parts of comprehensive legal check-up services.[72] Many other matters might well be included. The basic aim would be to develop and maintain a state of legal "health" for eligible recipients.

Another conception of a justice package, while including all the services of the preceding conception, would also include representation of eligible recipients or groups in the basic decisions affecting them. The poor and many middle class groups badly need advocacy for their interests in legislative and rule-making arenas.[73] They need to be represented before the important decisions have been made, while the information is being gathered and the plans formulated. They need effective representation when a Model Cities Program is being conceived and formulated, and before their interests have been "traded off" by political bargains. Charles Horsky's *The Washington Lawyer* (1952) presents a useful analogy. In this concept of legal service the lawyer seeks to become an effective participant in any function of legal process which may affect the interests of his clientele.

The principal aims of this concept of a "justice package" would be to provide not only the services traditionally supplied by lawyers to private clients, but to afford the poor and middle class access to and effective participation in legal processes; subsidiary goals would be to increase involvement and reduce alienation of the poor and middle class towards those processes.

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[71] Most of the legal services provided today are of the "one-shot" variety. The typical client, especially if he is of limited means, receives help in his pressing problem, but precious little else, Sykes, *supra* note 15, at 22-23. Louis M. Brown is one of the few who have recognized the need. Brown, *Preventive Law in OEO Legal Service Offices,* 41 CALIF. S.B.J. 377 (1965). Other examples of awakened interest are Haberman, *Preventive Law: A Challenge to the Bar,* 39 WIS. B. BULL. 7 (1966); Freeman, *Role of Lawyers as Counselor,* 7 WM. & MARY L. REV. 203 (1966).

[72] These needs have been mentioned at several points in this report, in the Sykes report (*supra* note 15) and in PARAPROFESSIONALS. L. J. Brown, in a letter to Martin Levine (November 17, 1967, at 3), refers to a check list, perhaps administered by a subprofessional, which would bring out potential problems in these and other areas.

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[73] One of the best studies of this vital – but difficult – area is Bonfield, *supra* note 63, which documents the need of the poor to be represented in the prescribing functions of federal administrative processes. See also *infra* Section V.

Section IV

SOME PROPOSED REFORMS IN THE STRUCTURE OF THE LEGAL PROFESSION

There is a story about a woman who came to the Legal Aid Society, and, after registration, was advised that she must pay a 25-cent registration fee. Indignantly the woman replied: "If I had a quarter I'd get a real lawyer." The bar has, seemingly intentionally, created the image that only lawyers who have plush offices and charge large fees are competent. Indeed, in addition to more charitable motivations, it has been suggested that the bar created legal aid societies so that unprofitable business could be referred there.[1]

To strengthen legal aid organizations qualitatively and quantitatively to a point where they would be fully comparable with good private law firms in providing legal services would be an expensive solution indeed. When the Office of Economic Opportunity was first talking of funding legal aid, it was estimated that between $400 million and $600 million per year would be needed, even at $30 – $50 per case. Since then, experiments have shown that attempts to saturate a poverty area with lawyers have not succeeded in meeting the demand.[2] And it is questionable whether the organized bar would tolerate massive competition from a legal aid system liberally funded by federal money. (One unusually candid lawyer, discussing a proposed legal aid office in his community said: "If the poor cannot afford attorneys, they can go clean cellars for the money.")[3] Even if the legal aid organization could be developed as suggested, it is doubtful that many lawyers would be willing to do the type of work demanded.

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[1] Certainly charitable and socially conscious feelings played a major part in the development of legal aid. But pressure from ABA CANONS OF PROFESSIONAL ETHICS No. 4 [hereinafter cited as ABA CANONS], saying that "A lawyer assigned as counsel for an indigent prisoner ought not to ask to be excused for any trivial reason, and should always exert his best efforts in his behalf," combined with the "right to counsel" cases, Mapp v. Ohio, 367 U.S. 643 (1961); Gideon v. Wainwright, 372 U.S. 335 (1963); Miranda v. Arizona, 384 U.S. 436 (1966); *In re* Gault, 387 U.S. 1 (1966), certainly provided a financial incentive to support public defenders.

Supporting the formation of legal aid are ABA CANON 12, "In fixing fees it should never be forgotten that the profession is a branch of the administration of justice and not a mere money-getting trade," and Ethical Consideration E.C 2-16 at 17, COMMITTEE ON EVALUATION OF ETHICAL STANDARDS, AMERICAN BAR ASSOCIATION, CODE OF PROFESSIONAL RESPONSIBILITY (July 1, 1969, later passed by the A.B.A.) [hereinafter cited as CODE] "Nevertheless, persons unable to pay all or a portion of a reasonable fee should have access to legal services, and lawyers should support and participate in ethical activities designed to achieve that objective," citing *Professional Representation: Report of the Joint Conference*, "If there is any fundamental proposition of government on which all would agree, it is that one of the highest goals of society must be to achieve and maintain equality before the law. Yet this ideal remains an empty form of words unless the legal profession is ready to provide adequate representation for those unable to pay the usual fees." 44 A.B.A.J. 1159, 1216 (1958).

Thus, new structures for providing legal services to an expanded clientele are needed, but the problems connected with introducing new structures are considerable.

A number of unmet legal needs have been exposed and we can predict with some confidence that the quantity and quality of legal needs will increase. More and more agencies are recognizing the need for increased legal assistance; new and different problems are being created daily by our social and physical technology.[4] How can we now, and in the future, meet the demand for legal and legally related services?

Too frequently the bar responds with simple answers: improve lawyer referral services, hire a public relations firm, write a weekly newspaper column, or enlarge the law shools and increase the number of students.

A. Lawyer Referral Services

The ineffectiveness of lawyer referral services is so clear that it is amazing how often such services are mentioned as a solution.[5] Though these services are common in sizeable cities, they are heavily handicapped by their own and the profession's structure. First, they are not widely used because before a person can use them, he must recognize his problem as a legal one.[6] A second basic limitation of lawyer referral has been the profession's refusal to recognize its specialization. Studies show that one half to two-thirds of all lawyers are specialized. Yet under *A.B.A. Canons* 45 and 46,

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[2] Johnson Jr., *Introductory Address*, in PROCEEDINGS OF THE HARVARD CONFERENCE ON LAW AND POVERTY 1, 3 (1967); UNIVERSITY RESEARCH CORP., PARAPROFESSIONALS IN LEGAL SERVICE PROGRAMS: A FEASIBILITY STUDY 8–9 (1968) [hereinafter referred to as PARAPROFESSIONALS].

[3] This incident was recorded in Wells, *The Legal Services Program – Counsel in Civil Matters*, 51 MASS. L.Q. 319, 325 (1966).

[4] The Social and Rehabilitation Service of the Department of Health, Education and Welfare has established a special legal services unit in the Administrator's Office; the Office of Economic Opportunity has raised the Legal Services Program to divisional status, for example. Problems of environment, of privacy, and other previously ignored matters are gaining legal attention. And the "justice package" described earlier has further implications for the increased demand.

[5] *See, e.g.*, Fritz, *How Lawyers Can Serve the Poor at a Profit*, 52 A.B.A.J. 448 (1966); Forrest, *More Clients Expected through D.C. Bar Lawyer Referral Service*, 33 D.C.B.J. 622 (1966); Cauldwell, *Lawyer Referral System*, 19 BROOKLYN BARRISTER 116 (1967).

> A lawyer available to act as an associate of other lawyers in a particular branch of the law or legal service may send to local lawyers only and publish in his local legal journal, a brief and dignified announcement of his availability to serve other lawyers in connection therewith. The announcement should be in a form which does not constitute a statement or representation of special experience or expertness.[7]

This left lawyer referral services unable to communicate special competence to a potential client. The new *Code of Professional Responsibility* does permit the lawyer's "name to be listed in lawyer referral system offices according to the fields of law in which he will accept referrals," but does not limit the lawyer to fields in which he usually practices.[8] Even under the new *Code*, the client may feel he has only a fair chance of getting a lawyer who specializes in the appropriate field.[9] It is no wonder the services are little used. Third, referral services must suffer until people are able to pay for a lawyer once they are referred to one. The present tax laws, which allow corporate but not personal attorneys' fees to be written off as business expenses, encourage imbalance in lawyer utilization. New York City is an extreme example. Starting lawyers' salaries in 1969 on Wall Street reached $18,000 per year. Few New York firms, onor off Wall Street, serve the poor. Seventy percent of New York City lawyers in one survey said the median income of their clients was over $10,000, while only 10% of the city population had an income over $10,000. In contrast, only 5% of the attorneys served clients with median incomes under $5,000.[10]

B. Public Relations Efforts

Lawyers are often frustrated because clients do not understand what an attorney can and cannot accomplish. Many lawyers and bar associations are recognizing the need for (and in some cases are hiring) public relations counsel. The President of the Colorado Bar Association commented, "The objective is not to create 'images,' to blow our horns or to exalt ourselves as something which we are not. Instead, it is to study a problem in communication, and then perhaps to help to create in the public mind a better understanding of what we are all about. This must include warts as well as the halos."[11] The possibility remains that public relations firms will see their task not as educating the community but as building images. Further, educating the public may save attorneys a little time, but will not in itself provide more or better legal services.

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[6] *See supra* Section III, at note 17.

[7] Further, ABA CANON 45 provides that "specialists in particular branches [of the law] are not to be considered exempt" from the canons.

[8] CODE, Disciplinary Rule D R 2-105 (A) (2) at 26.

[9] *See* Schwartz, *Group Legal Services in Perspective*, 12 U.C.L.A.L. REV. 279, 289, 294 (1965). Further, whatever the area of specialty of the lawyer a poor person is referred to, he is likely to be less competent and less interested than a middle-class person's lawyer. Carlin & Howard, *Legal Representation and Class Justice*, 12 U.C.L.A.L. REV. 381, 384-5 (1965)

The American Bar Association has published a book on *Public Relations for Bar Associations,*[12] which covers various media. Still, it would be hard to question the proposition that more people learn more information or misinformation from Perry Mason on the television than from all the bar's public relations efforts.

C. Larger Law Schools

Frequently the answer is given: Increase the number of law students, which will eventually increase the number of lawyers. That suggestion presents several difficulties: Where would law schools get the applicants?[13] And does the law school curriculum now in force train lawyers to meet present and future needs for legal services?[14] Even if lawyers were available, would they be willing to perform the necessary tasks?[15] Undoubtedly, the

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[10] Carlin & Howard, *supra* note 9, at 410. G. BRAGER & F. PURCELL, COMMUNITY ACTION AGAINST POVERTY 293 (1967).

[11] Colorado Bar Association Newsletter, January 20, 1969, at 3, col. 1.

[12] STANDING COMMITTEE ON PUBLIC RELATIONS OF THE AMERICAN BAR ASSOCIATION, PUBLIC RELATIONS FOR BAR ASSOCIATIONS (1953).

[13] The American legal profession has not followed the lead of the medical profession in trying to answer such questions. Very recently the Association of American Law Schools has begun a "Student Wave Survey" to delineate carefully the demand for legal education and to measure accurately society's needs for lawyers. Once these findings are in, the survey hopes to be able to predict with some accuracy future demands as a guideline for enlisting new students into the study of law. *See* Association of American Law Schools, Newsletter, Student Wave Survey, no. 1-4, July, 1966, December, 1966, June, 1967, February, 1969. *See also supra* Section I, notes 4, 5 and 6.

[14] *See* Jones, *Education and Training: The Future,* 111 SOL. J. 384, 407, 426, 447, 466 (1967); Gray, *Legal Education and Professional Needs,* 4 SOL. J. 230 (1965); Ritchie, *Legal Education: The Past and the Future,* 32 TENN. L. REV. 386 (1965); Kelso, *Curricula Reform for Law School Needs of the Future,* 21 U. MIAMI L. REV. 526, 537, 544 (1967); Pincus, *Reforming Legal Education*, 53 A.B.A.J. 436 (1967); Winston, *Law and Legal Education in the Computer Age,* 20 J. LEGAL ED. 159, 309 (1968).

medical school analogy of the use of law students to provide clinical legal services for the poor will be extended. Yet this *ad hoc* and presumably inferior solution does not face the quantitative and qualitative problems squarely.[16]

To rely on the organized legal profession to meet the needs will require reorganization of the bar and of legal education, the nature and extent of which is not likely. For example, extension of legal aid, expansion of public defenders' offices, group legal services, prepaid legal services through insurance, and recognition and regulation of specialization would all be necessary.

D. Expansion of Legal Aid

Of course, lawyers originated legal aid societies to provide an organized means of helping the indigent.[17] And, 26 years after Reginald Heber Smith's book on legal aid, Harrison Tweed induced the American Bar Association in 1945 to give full recognition to its obligation of leadership in legal aid.[18] But by 1965, legal aid was still sorely underfinanced. There were, in all the U.S., only 147 legal aid offices and 136 volunteer legal aid committees handling about 500,000 cases.[19] With fewer than 1,000 legal aid lawyers[20] handling

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[15] *See* Habermann, *All Work and No Play. . .Is It the Answer?*, 41 FLA. B.J. 557 (1967) which treats the work overload that most lawyers are now faced with and suggests ways of working more efficiently; Golman, *Lawyer's Changing Role in a Rapidly Changing Society*, 44 DENVER L. J. 88 (1967) stresses the broadening scope of duties and responsibilities of today's lawyers; a lawyer can no longer be merely a good advocate.

Probably a major reason that the majority of some routine tasks, like preparing tax returns, is performed by non-lawyers is that lawyers are bored by those jobs and do not want to do them. A fairly typical neighborhood legal services office found most of its work in the following fields: domestic relations (mostly uncontested divorce) 45%, debt (mostly defending debtors) 20%, traffic offenses 6%, criminal misdemeanors 6%, administrative agencies 5%. For the most part, this is routine, dull, hard work, and the bloom of the poverty work rose is likely to fade.

Nader, *Law Schools and Law Firms*, THE NEW REPUBLIC, Oct. 11, 1969, at 20, points out that divorce and bankruptcy, while necessary for the poor, have neither the intellectual interest nor the cost-benefit ratio that cases against powerful financial interest have. So legal aid lawyers and firm lawyers in their *pro-bono* work are beginning to move away from "band-aid" cases to more ambitious suits, which are also far more threatening to the rich.

[16] Mancuso, *Law Students and Defender Offices*, 24 LEGAL AID BRIEF CASE 242 (1966).

[17] *See* R. SMITH, JUSTICE AND THE POOR (1919).

[18] Marden, *The President's Page*, 53 A.B.A.J. 3 (1967).

[19] Powell, *The President's Page*, 51 A.B.A.J. 3 (1965).

up to 1,000 cases each a year but 32.6 million poor persons,[21] legal aid was clearly not meeting the needs.

In 1965, the federal government began funding legal aid, under the *Economic Opportunity Act* of 1964,[22] a major factor in the great growth in legal aid. In 1965, the House of Delegates of the American Bar Association endorsed OEO Legal Services,[23] but "the virtual revolution that has occurred in [recent]. . .years was the work, not of the bar, but primarily of outside sources – the civil rights movement, the Ford Foundation, the President's committee on Juvenile Delinquency and Youth Crime, urban renewal, individual sociologists and the Office of Economic Opportunity."[24]

One good feature of some OEO legal services offices is the joining of legal services with other services in Community Action Program neighborhood centers. Poor people have assorted problems for which they may need a medical clinic, a social security office, social workers, a workmen's compensation office, an unemployment compensation office, etc. When these centers can be joined, the gigantic bureaucracy can be humanized to some extent. Further, the professionals and non-professionals working for each organization can help the clients, can make referrals to and within the center conveniently, and can teach each other some of the skills and knowledge needed to deal with the whole person.

While the funding of many OEO programs has been decreased, the entry into legal services of the Department of Housing and Urban Development, through the Model Cities program, and the Department of Health, Education and Welfare may insure continued federal assistance to legal aid.[25] How far legal aid will expand is dependent on both the federal government and the willingness of lawyers to enter this sort of public service.[26] In any event, legal aid is certain to be faced with mushrooming caseloads as poor people realize

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[20] In the U.S. there were over 300,000 lawyers. AMERICAN BAR FOUNDATION, THE 1967 LAWYER'S STATISTICAL REPORT 11 (F. Weil, ed., 1968) [hereinafter cited as STATISTICAL REPORT]. Even in 1969, with over $30 million of federal money, there are only 2,300 legal aid attorneys. Robb, *HEW Legal Services: Beauty or Beast?*, 55 A.B.A.J. 346 (1969)

[21] U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE U.S.: 1967, 338 (1967) [hereinafter cited as ABSTRACT].

[22] Pub. L. No. 88-452, 78 Stat. 508, 42 U.S.C. Sec. 2701-2981, approved August 20, 1964.

[23] *Proceedings of the House of Delegates: Midyear Meeting, February 8-9, 1965*, 51 A.B.A.J. 399 (1965).

[24] Wells, *supra* note 3, at 320.

[25] *See* Robb, *supra* note 20, at 346. And Social and Rehabilitation Service, U.S. Department of Health, Education and Welfare, Meeting Legal Needs of the Poor (Brochure, 1969), citing the Social Security Act, title IV, Part A as amended.

[26] *See supra* note 15.

that problems not previously recognized by them as legal can be handled with the help of a lawyer. New service structures will be necessary – among them paralegals.[27]

A further consideration may expand the scope of legal aid. Present requirements for client eligibility involve firm income limits: applicants with incomes below the line can theoretically receive all the help they desire; those just above the line receive no aid at all. A more equitable eligibility system is needed. Provision might be made for a sliding scale of services, giving applicants with incomes below a cut-off line full services, but also providing some services to applicants with incomes above the cut-off but still unable to pay for legal help. A schedule could be made stipulating what services an applicant with a particular income level would be eligible for, up to a new, higher income level, above which legal aid would render no services. Obviously, such a system would put still more pressure on overburdened legal aid.

E. Expansion of Public Defender Offices

As legal aid was developed out of multiple motives so were public defender offices. Some lawyers felt compassionate, others did not want to be appointed to defend clients.[28] The U.S. Supreme Court, in extending the federal Bill of Rights to state-accused felons and juveniles, has increased the complexity of criminal law and procedures, and increased the number of defendants requiring state-provided counsel.[29]

It seems certain that, given the pressures of modern society, crime will continue to grow.[30] And state legislatures have continued to define more and more acts as criminal.[31] Again, the bar's willingness and ability to respond to the need for increased representation in criminal proceedings is not certain.[32]

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[27] *See infra* Section V.

[28] Searle, *Argument for the Public Defender System,* 5 SANTA CLARA LAW. 48, 57-58 (1964); Bradley, *Representation of the Indigent Accused of a Crime From the Viewpoint of Court Appointed Counsel,* 29 MO. L. REV. 328 (1964) describes the hardships of the lawyer appointed as counsel by the Court.

[29] Gideon v. Wainwright, 372 U.S. 335 (1963); Miranda v. Arizona, 384 U.S. 436 (1966); *In re* Gault, 387 U.S. 1 (1966).

[30] The total crime rate in the U.S. has grown from 540.8 known offenses per 100,000 persons in 1940, to 637.8 in 1950, to 1064.4 in 1960, to 1,434.3 in 1965. ABSTRACT 150. *See also* Morris, *The Human Zoo,* PLAYBOY, Sept. 1969, at 123

[31] *See* H. PACKER, THE LIMITS OF THE CRIMINAL SANCTION (1968).

[32] Homans, Jr., *The Legal Services Program – Defense of the Accused,* 51 MASS. L. Q. 329, 330, 339 (1966).

F. Group Legal Services

"Group legal services" does not refer to groups of lawyers, for law firms have become a standard form of practice. The term refers to groups of clients or potential clients who use legal services. Trade unions are examples of the groups who have desired to provide legal services for their members.[33]

A.B.A. Canon 35 forbade group legal services, excepting charitable societies rendering aid to indigents:

> The professional services of a lawyer should not be controlled or exploited by any lay agency, personal or corporate, which intervenes between client and lawyer. . . .A lawyer's relation to his client should be personal, and the responsibility should be direct to the client. . . .
>
> A lawyer may accept employment from any organization, such as an association, club, or trade organization, to render legal services in any matter in which the organization, as an entity, is interested, but this employment should not include the rendering of legal services to the members of such an organization in respect to their individual affairs.

Because an intermediary is such a standard means of joining individuals and products or services, group legal services have kept on appearing, and unauthorized practice committees have continued to sue.

The U.S. Supreme Court has been breaking down the statutory and canonical barriers to group legal services in cases like *N.A.A.C.P. v. Button,*[34] *Brotherhood of Railroad Trainmen v. Commonwealth of Virginia, ex rel. Virginia State Bar*[35] and *United Mine Workers v. Illinois State Bar Association.*[36] These cases hold that the *Canons* as well as the statutes which back them up must yield to the rights of free speech and assembly. At least a union, and probably other groups as well, may employ an attorney whose job is to advise the union members about their personal legal problems. In addition, groups like the N.A.A.C.P. may provide attorneys to members or non-members who may be parties to lawsuits in which the group is interested.

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[33] The California Standing Committee on "Group Legal Services" released a lengthy progress report that is the benchmark from which the consideration of group legal services has measured. *Committee Report on Group Legal Services,* 39 CALIF. S.B.J. 639 (1964). The Board of Governors did not accept the major recommendations of the report. 40 CALIF. S.B.J. 325 (1955). But in 1968, in view of court decision cited below, amendments were proposed to the Rules of Professional Conduct to allow group legal services in California. 43 CALIF. S.B.J. 474 (1968).

[34] N.A.A.C.P. v. Button, 371 U.S. 405 (1963).

[35] Brotherhood of Railroad Trainmen v. Commonwealth of Virginia *ex. rel.* Virginia State Bar, 377 U.S. 1 (1964).

[36] United Mine Workers v. Illinois State Bar Association, 389 U.S. 217 (1967).

The American Bar Association and most state bar associations are against the court decisions and wish to interpret them as narrowly as possible. The group which wrote the preliminary draft of the *Code of Professional Ethics* did not disapprove or strictly limit group legal services.[37] The final draft, adopted by the A.B.A. at the 1969 annual meeting, allows group legal services, "but only in those instances and to the extent that controlling constitutional interpretation at the time of the rendition of the services requires the allowance of such legal service activities. . ." This section was written so that attempts to extend constitutional interpretation are unethical under the Disciplinary Rules.[38] The only controversy concerning the *Code* on the floor of the House of Delegates was a proposed amendment by the Special Committee on Availability of Legal Services which would have approved and regulated extension of group legal services. The amendment was defeated by voice vote.[39]

Neither the preliminary nor the final draft of the *Code of Professional Responsibility* would allow a prepaid legal services plan resembling the common health insurance plans, for neither permits the intercession of any lay group whose primary purpose is the provision of legal services.

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[37] It provided that "Likewise, it is not improper for a lawyer to volunteer. . .advice and render resulting legal services in connection with permissible group legal services." CODE, Ethical Consideration E C 2-4 at 12. "However,. . .[a lawyer] may in a dignified manner cooperate in the offering of legal services by any of the following. . . .A professional association, trade association, labor union, or other bona fide, non-profit organization which, as an incident to its primary activities, furnishes, pays for, or recommends legal services to its members or beneficiaries." Disciplinary Rule D R 2-101 (D)(3), CODE 19 (Prelim. Draft, 1969).

[38] "However,. . .[a lawyer] may cooperate in a dignified manner with the legal service activities of any of the following, provided that his independent professional judgement is exercised in behalf of his client without interference or control by any organization or other person:. . . (5) Any other non-profit organization that recommends, furnishes, or pays for legal services to its members or benficiaries, but only in those instances and to the extent that controlling constitutional interpretation at the time of the rendition of the services requires the allowance of such legal service activities, and only if the following conditions, unless prohibited by such interpretation, are met: (a) The primary purposes of such organization do not include the rendition of legal services. (b) The recommending, furnishing, or paying for legal services to its members is incidental and reasonably related to the primary purposes of such organization. (c) Such organization does not derive a financial benefit from the rendition of legal services by the lawyer. (d) The member or beneficiary for whom the legal services are rendered, and not such organization, is recognized as the client of the lawyer in that matter." DR 2-103(D), CODE 24 (Final Draft, July 1969).

[39] *See* 14 AM. B. NEWS 1 (Sept., 1969). The sections of this report on group legal services and specialization rely heavily on Wallace, *The Code of Professional Responsibility – Legislated Irrelevance?* (to appear in TEX. L. REV., Jan. 1970).

Since the First Amendment right of association guarantees a labor union the right to provide a group legal services program as a secondary pupose, the same right might support a legal insurance plan. But the case has not yet been brought and the newly adopted ethics may make it difficult for a group to develop a working plan before suit is brought.

G. Regulated Attorney Specialization

For many years the bar has recognized specialization in patent, copyright, trademark, and admiralty law, and studies have shown that lawyers specialize in nearly every other field also, including estates and probate, corporate law, plaintiff's and defendant's counsel in personal injury, real property, domestic relations, taxation, administrative law, criminal law, bankruptcy, and public utilities. In 1968, the California State Bar Committee on Specialization found that two-thirds of the lawyers surveyed were specialists in one or a small number of fields of law.[40] With increasing urbanization in California, "it is predictable that shortly three out of four members of the Bar will specialize, whether certified or not."[41]

A Wisconsin survey found that about 55% of the lawyers surveyed devoted more than 50% of their time to a single field of law, and 60% favored some kind of specialty designation for lawyers.[42] The Colorado Bar survey found that 59% of the surveyed lawyers spent more than 50% of their time in one of 19 fields, and that 87% spent 30% or more of their time in one field.[43]

Despite the fact of specialization, the American Bar Association is reluctant to recognize or regulate it. In 1953, a Special Committee on Specialization and Specialized Legal Education was formed.[44] In 1954 it submitted a long, strongly worded report, arguing that specialization already exists, that specialization leads to efficiency and low cost, that "general practitioners will not be exterminated," and that the A.B.A. should take detailed steps to define and control specialization. The House of Delegates substituted a short general statement approving, in principle, voluntary specialization.[45] During several years after 1954, some noted writers supported specialization but the A.B.A. did little.[46]

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[40] Committee on Specialization, *Final Report*, 44 CALIF. S.B.J. 493 (1969).

[41] Committee on Specialization, *Results of Survey on Certification of Specialists, Preliminary Report*, 44 CALIF. S.B.J. 146 (1969).

[42] Report of Committee on Specialization, Wisconsin State Bar 4 (May, 1968, mimeograph), cited in *Wallace, supra* note 39.

[43] THE ECONOMICS OF LAW PRACTICE COMMITTEE OF THE COLORADO BAR ASSOCIATION, REPORT ON THE 1967 ECONOMIC SURVEY OF THE COLORADO BAR 3-5 (1968).

[44] At the same time the Committee on Professional Ethics and Grievances recommended state and local recognition of specialization for the purpose of law lists. This recommendation was returned for further study with speakers questioning the use of the word "specialist." 78 A.B.A. REP. 348, 353-54 (1953).

In the early 1960's interest revived and in 1962 a Special Committee on Recognition and Regulation of Specialization in Law Practice presented a report, being careful to say "It is Not 'Specialization.' The whole of the plan is the recognition of special proficiency," that there would be no "colleges" (like those in medicine) to "dilute the control of the Association itself over the profession," and that the plan would be voluntary.[47] Despite these caveats, the report was received with such hostility that the committee had to fight to have it received for informational purposes only, with a deferral of the vote.[48] But when the vote was due, the committee reported: "Your Committee recommends that it be discharged and that all efforts to draft an acceptable specialization program be indefinitely postponed. It is apparent to the Committee as it must be to all the delegates that the bar of the country either does not want specialization controlled or is not prepared to accept regulation at this time."[49] The recommendation to discontinue was accepted.[50]

The *Code of Professional Responsibility* has recognized *de facto* specialization and in principle the A.B.A. has decided to try to control the way in which increasing legal specialization occurs.[51] In its various drafts the *Code* has moved from certification approved by a national organization, to voluntary self-certification within a single specialty, to certification by an authority having jurisdiction under state law.[52]

Letting authority rest with the states could lead to great variation in the requirements for certification. More importantly, the diffusion of control and power will postpone the development of training programs at law schools, which in the long run are necessary to provide lawyers with concentrated training in these special fields. If extra training or substantial experience were required for certification, the specialist would probably gain extra status and be more willing to hire assistants, to develop different ranks of assistants, and to take the time to develop management techniques and systems.

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[45] 79 A.B.A. REP. 582-94, 450-51 (1954).

[46] *See, e.g.*, H. DRINKER, LEGAL ETHICS (1954); Tweed, *The Changing Practice of Law*, 11 RECORD OF N.Y.C.B.A. 13 (1965); Tweed, *The Changing Practice of Law: The Question of Specialization*, 48 A.B.A.J. 423 (1962); Cantrall, *A Country Lawyer Looks at "Specialization,"* 48 A.B.A.J. 1117 (1962); 87 A.B.A. REP. 362 (1962).

[47] 87 A.B.A. REP. 362-64 (1962).

[48] *Id.* at 453.

[49] 88 A.B.A. REP. 672 (1963).

[50] *Id.* at 464.

[51] *Association's House of Delegates Meets in Chicago, January 27-28*, 88 A.B.A.J. 374 (1969).

[52] Wallace, *supra* note 39, at 17; CODE, DR 2-105 (A)(4) at 27.

From present evidence we must assume that, in the immediate future, the following structure will remain: a fairly constant number of law students will be graduated annually, most of whom are motivated by promises of financial success in legal practice and none of whom will be recognized, certified specialists. Despite current pressures to make legal education more practical, the law schools will continue to focus on traditional and propertied subjects.[53]

At least in the short run, we must conclude that the organized components of the legal profession cannot and will not meet the clear need for legal services that has been identified.

It would seem that a parallel and complementary structure for providing certain legal services, at minimum cost but with maximum effectiveness and efficiency, must be invented. The shape and dimension of that structure are not clear. Yet, if we assume the need of plans to meet present and projected legal needs, we must necessarily conclude that a search must begin for new structures. A combination of structures must be the answer. For example, we might begin simultaneously to recognize, within the bar, specialties in the areas where there are pressing new demands and to organize the lawyer-specialists into neighborhood offices, in group legal services, and in prepaid legal insurance organizations. The goal, of course, is to supply the services needed at a cost clients can afford. At the same time, we could upgrade the training for known present and projected paralegal occupations discussed in other parts of this report. For example, the community corporation, the information officer in a host of governmental and volunteer organizations, the paralegal official in the court – all might be equipped to contribute to at least some segments of the "justice package." In any event, there is a need for a redeployment of personnel including lawyers, known paralegals, emerging paralegals, and paralegals as yet not anticipated.

In the above suggestions – as well as in any others that might be made – there is an important underlying theme: He who gives advice about the law, on which the recipient can be expected to rely, is a fiduciary. Mr. Justice Benjamin N. Cardozo early observed that: "A trustee is held to something stricter than the morals of the marketplace. Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior."[54]

Legal services and advice are given in an intimate atmosphere of trust; the recipients expect that the advice is accurate, and given with the recipient in mind, untainted with the potential self-interest of the giver or his employer.[55] Thus, in proposing any procedures for filling legal needs, we must continue to ask: How will the fiduciary nature of the relationship created, however brief, be preserved?

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[53] Mooney, *The Media is the Message*, 21 U. MIAMI L. REV. 507, 509, 517 (1967); Pincus, *supra* note 14.

[54] Meinhard v. Salmon, 249 N.Y. 458, 464, 164 N.E. 545, 546 (1928).

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[55] *See* A.B.A. CANON 5; CODE EC 5-1 at 57.

Section V

MEETING LEGAL NEEDS

A. Trends Indicating Supply of Eligible Labor Force

Part of the solution to America's unmet legal needs will come from a reorganization of the structures and practice of the formally qualified legal profession. Specialization in areas of legal practice will, eventually, be recognized, along with "group practice" and prepaid legal insurance. But the reorganization of legal practice by licensed attorneys will be a slow process, and not whole-heartedly supported by all members of the profession. Other means of providing legal services, at varying levels of technical complexity, must be developed.

As with trends affecting the demand for legal services, it is useful to list certain trends which will affect the *supply* of manpower for expanding existing legal occupations and creating new careers.

Education: Unstable careers and careers interrupted for additional advanced training will become increasingly common as the obsolescence problem affects most occupations. (See Table 1.)

TABLE 1

Workers by Occupation: 1950–67
(1,000's)

Occupation	1950	1960	1967(March)
TOTAL	59,648	66,681	72,560
Professional technical and kindred	4,490	7,475	9,942
Craftsmen, foremen, and kindred	7,670	8,560	9,572
BUT			
Laborers (excluding farm and mine)	3,520	3,665	3,130
Farm workers	7,408	5,395	3,153

Section V

The numbers of workers in technical and skilled occupations have increased sharply, but those in less skilled occupations have decreased, even in absolute terms. Re-training is thus vital.[2] Indeed, education may well become part of the way of life at all ages rather than an activity reserved for the young. (See Tables 2 and 3.) Continuing and renewed education will be especially critical as a growing proportion of women seek entry or re-entry into the labor market.

TABLE 2.[3]

The Growth of Education: 1930–1965

Year	Kindergarten–Higher Education enrollment (1000)	Total Resident Population (1000)	% of Population Enrolled	Expenditure (million $)	Expenditure per enrollee ($)	Expenditure % of G.N.P.
1930	29,652	123,077	24.1	3,182	109	3.5
1940	29,751	132,457	22.5	3,330	112	3.3
1950	31,319	151,868	20.6	12,613	403	4.4
1960	45,228	179,952	25.1	24,642	545	4.9
1965	54,500	193,815	28.1	44,502	817	6.5

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[1] U.S. BUREAU OF THE CENSUS, STATISTICAL ABSTRACT OF THE U.S.: 1967 230 (1967) [hereinafter cited as ABSTRACT].

[2] *See* Wilensky, *Orderly Careers and Social Participation: The Impact of Work History on Social Integration in the Middle Mass*, 26 AM. SOC. REV. 521 (1961).

[3] ABSTRACT 5, 109, 319.

TABLE 3.[4]

Institutions of Higher Education – Faculty, Enrollment, and Expenditure:
1940 – 1964

Item	1940	1950	1960	1964
Institutions representing Staff and enrollment	1,708	1,851	2,008	2,132
Faculty	146,929	246,742	308,554	494,514
Resident college enrollment (degree credit) (1000)	1,494	2,659	3,216	4,234
Male (1000)	863	1,853	2,080	2,623
Female (1000)	601	806	1,136	1,611
Current Expenditure ($1,000,000)	675	2,246	5,601	9,178

In 1965, 535,031 individuals earned their bachelor's or first professional degree (of which 12,000 were in law); 112,124 earned Masters or second level degrees, and 16,467 earned doctorates.[5] Federal aid to education grew several times between 1962 and 1965 alone.[6] (See Table 4.)

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[4] *Id.* at 133.

[5] *Id.* at 137, 140.

[6] *See* W. MOORE, ORDER AND CHANGE: ESSAYS IN COMPARATIVE SOCIOLOGY (1967).

TABLE 4.[7]

Federal Funds for Education and Related Activities: 1962, 1966
(in millions of dollars)

	1962	1966
Federal funds supporting education in educational institutions	2,067.1	10,583.5
Elementary-secondary education	1,745.9	6,113.4
Vocational education	26.4	115.9
Higher education	991.9	2,656.6
Adult vocational-technical and continuing education	87.8	926.1
Veterans' education	49.9	6.3
General continuing education	.4	19.2
Training State and local personnel	2.9	14.0
Loans	321.2	612.5
Vocational education insured loan fund		1.0
Other Federal funds	2,663.3	3,857.6
Training of Federal personnel	1,177.5	1,706.7
Professional and technical training of military	1,072.0	1,487.9
Other (including extension services, educational television facilities, education in Federal correctional institutions.)	68.4	122.3
TOTAL	4,730.4	10,583.5

New developments in vocational training in secondary schools and in community colleges may provide useful skills and not simply serve to keep youngsters off the streets. (See Tables 5 and 6.)

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[7] ABSTRACT 145.

TABLE 5.[8]

Junior Colleges – Number and Enrollment: 1930–1963

Year	Number	Enrollment
1930	277	55,616
1940	456	149,854
1950	506	243,839
1960	509	403,524
1963	573	618,957

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[8] ABSTRACT 132. Also, *see* Moore, *Toward A System of Sequences,* in THEORETICAL SOCIOLOGY: PERSPECTIVES & DEVELOPMENTS (J. McKinney & E. Tiryakian eds., to be published by Appleton-Century-Crofts, 1970).

TABLE 6.9

Vocational Programs, Federally Aided – Number of Students and Teachers, by Type of Program: 1965

Program	Teachers		Students (1000)
	Full time	Part time	
TOTAL, ALL PROGRAMS	53,648	69,833	5,431
Adult	4,973	49,075	2,378
Secondary	41,366	13,382	2,820
Post secondary	6,963	6,620	207
DISTRIBUTION	1,778	5,508	333
Adult	99	4,489	250
Secondary	1,555	892	76
Post secondary	118	120	6
HEALTH OCCUPATIONS	2,227	1,194	67
Adult	693	753	37
Secondary	145	90	9
Post secondary	1,385	346	21
HOME ECONOMICS	15,252	14,348	2,099
Adult	730	12,254	650
Secondary	14,467	1,992	1,443
Post secondary	12	40	2
OFFICE OCCUPATIONS	6,045	9,673	731
Adult	91	2,874	187
Secondary	5,310	5,159	498
Post secondary	549	288	44

Leisure and Voluntarism: During the years from 1960-66, a time of high employment rates and prosperity, the number of weekly man hours worked increased in almost all major industries. However, to the extent increased leisure exists, it has primarily affected the lower-middle ranges of the occupational or income distribution, leaving a substantial amount of involuntary idleness among the poor (a major target group for "new careers"), a small bit of voluntary idleness among the independently wealthy, and relatively long working hours in the upper-middle ranges. (See Table 7.)

TABLE 7[10]

Working Hours of Employees: 1950–1967

Year	Agriculture employees %working 35 hours or more	Non-agriculture employees % working 35 hours or more
1950	74.3	83.6
1960	70.7	79.2
1965	67.8	78.8
1967	67.4	77.3

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[9] ABSTRACT 145. The federal government has begun funding a number of new vocational education programs. In 1956, it began a "health occupations" program (*Id.* note 3, at 143). A "distributive occupations" program deals with merchandising activities, buying, selling and management (*Id.* at 142). Under the Manpower Development and Training Act of 1962, there is an on-the-job training program, which had 113,527 enrollees in 1966 (*Id.* at 142). An "office occupations" training program was initiated in 1965, spending $12 million of federal money and $53.6 million total (*Id.* at 143) to train 730,000 enrollees (*Id.* at 144).

By 1966 the federal government was spending $617.4 million on vocational and technical education (*Id.* at 145). Also, *see* Early, *The Need for Legal Nurses,* 74 CASE & COMMENT Sept. – Oct. 1969, at 34.

[10] ABSTRACT 224. *See also* Wilensky, *The Uneven Distribution of Leisure: The Impact of Economic Growth on "Free Time,"* 9 SOC. PROB., 32-56 (1961); S. DE GRAZIA, OF TIME & LEISURE (1962).

Mainly, these long working hours represent a preference for additional income over leisure, but, social critics to the contrary notwithstanding, a substantial and certainly growing proportion of the employed population enjoys its work.[11] Yet we must assume that with growing levels of affluence there will be (a) some increasing possibilities of "moonlighting" in second jobs,[12] and (b) increased leisure, including the possibility of voluntary services for community service organizations.[13]

Occupational Trends: Various occupational trends are relevant to a consideration of sublegal or paralegal training. Rising white collar employment is part of the general shift of our economy from a production orientation to a service orientation. While non-whites still face many barriers to gaining white collar jobs, the percentage of non-white workers holding white collar jobs doubled from 1950 through 1966.[14]

The number of professional workers has grown even faster than the number of white collar workers. The experienced male labor force grew 6.9% from 1950 to 1960 while the number of experienced male "professional, technical and kindred" workers grew 50.2%.[15] The very rapid growth of particular occupations – including social workers, insurance and real estate brokers, law enforcement officers, and clerical and secretarial personnel – especially suitable for paralegal training is notable. (See Tabel 8.)

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[11] E.g., D. REISMAN, INDIVIDUALISM RECONSIDERED (1964), especially the chapter entitled, *Some Observations on Changes in Leisure Attitudes.*

[12] ABSTRACT 224.

In 1965 the rate of multiple job holding was 5.2%, in 1966, 4.9% (7.8% in agriculture, 4.8% in non-agricultural industries.)

[13] Increased leisure or community service depends both on the free time when one is not working (*see supra* Table) and on one's inclination. S. DE GRAZIA, *supra* note 10.

[14] ABSTRACT 231. Much of the following discussions is drawn from Holme, *Paralegals and Sublegals: Aids to the Legal Profession,* 46 DENVER L.J. No. 3 (1969).

[15] *Id.* at 230.

TABLE 8.[16]

Experienced Civilian Labor Force, by Sex and Occupation
1950 and 1960, and by Selected Characteristics, 1960
(Persons 14 years old and over.)

SEX AND OCCUPATION	**1960 Total**	**%Inc. 1950-60**	**1960 Non-white Percent**	**Median Earnings 1959 ($)**
Male and Female	67,990,078	14.8	10.6	
MALE	45,686,330	6.9	9.6	4,621
Professional, technical & kindred workers	4,542,702	50.2	3.5	6,619
Accountants & auditors	396,343	10.7	1.4	6,611
Lawyers and judges	205,515	16.7	1.3	10,587
Physicians and surgeons	213,918	18.1	4.0	14,561
Social, welfare, and recreation workers	58,347	73.9	11.1	4,961
Technicians	141,653	206.7	5.7	5,449
Medical and dental	52,892	54.5	10.0	4,503
Officials & inspectors, State & local administration	135,816	10.9	2.0	5,554
Other clerical and kindred workers (excluding bookkeepers & mail carriers)	2,769,774	16.0	6.8	4,736
Insurance agents, brokers, underwriters	333,126	32.8	1.9	6,173
Real estate agents & brokers	148,957	21.8	2.1	5,278
Policemen, sheriffs and marshals	276,976	28.1	3.9	5,210

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[16] *Id.* at 232-35.

	1960 Total	% Inc. 1950-60	1960 Non-white Percent	Median Earnings 1959 ($)
FEMALE	22,303,748	35.1	12.8	2,257
Professional, technical, & kindred workers	2,792,997	41.4	7.2	3,625
Accountants and auditors	80,483	41.4	2.5	4,209
Lawyers and judges	7,543	18.8	2.6	5,199
Nurses, professional	577,038	45.8	6.5	3,186
Social, welfare, and recreation workers	78,017	29.4	12.4	4,074
Technicians, medical and dental	87,944	99.2	7.8	3,180
Clerical and kindred workers	6,497,250	47.4	3.6	3,017
Office-machine operators	236,413	96.4	5.0	3,242
Secretaries	1,451,689	85.8	2.0	3,368
Stenographers	264,157	36.6	2.8	3,340
Typists	516,844	52.1	6.7	2,801
Other clerical and kindred workers	2,501,968	52.5	4.8	2,852
Insurance and real estate agents & brokers	82,889	80.3	4.4	3,018

The rapid growth in participation of women, especially white women, in the labor force indicates there will be many people eligible for sublegal or paralegal training. For instance, in 1960, 35 per cent of white women over 14 worked. The projection for 1980 is that 40 percent will be working, an increase of 11 million workers. (See Table 9.)

TABLE 9.[17]

Labor Force – Total, and Participation Rates by Color and Sex:
1960 and Projections, 1970 and 1980

COLOR AND SEX	TOTAL LABOR FORCE (In thousands of persons 14 years old and over)			PARTICIPATION RATE (in %)		
	1960	1970	1980	1960	1970	1980
TOTAL	**73,081**	**85,999**	**101,408**	**57.4**	**57.5**	**58.3**
MALE	49,563	55,844	64,981	79.7	77.0	77.2
White	44,666	50,027	57,596	80.0	77.3	77.5
Nonwhite	4,897	5,815	7,387	77.0	74.3	75.0
FEMALE	23,518	30,155	36,427	36.1	39.1	40.6
White	10,391	26,245	31,541	35.0	38.3	40.0
Nonwhite	3,127	3,910	4,886	45.5	45.4	45.0

Meaningful Service: Widespread testimony from colleges and professional schools (and some from secondary schools) indicates a marked growth of interest among young people in jobs or activities that will serve the community, and particularly the disadvantaged.[18]

The Harvard Law Record recently reported that more of their students are beginning work in public service activities and fewer in law firms, as indicated in Table 10, below:

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[17] *Id.* at 222.

[18] Nader, *Law Schools and Law Firms,* THE NEW REPUBLIC, Oct. 11, 1969 at 20-23. This contemporary phenomenon has proviked much comment. While many people differ with some of the objectives of active, idealistic students, few would doubt that their interest in and concern for disadvantaged portions of the American population are sincere. Weinberg, *Law Students and Legal Aid,* 33 U. CHI. L.S. REC. 29 (1965) Cleary, *Law Students in Criminal Law Practice,* 16 DE PAUL L. REV. 1 (1966) give examples of such social concern on the part of law school students. The latter article provides a detailed plan for the utilization of enthusiastic law students, their knowledge and talents, in the rather unpopular (until recently) field of criminal law and gives examples of implementation of this idea in several law school-initiated projects.

TABLE 10.[19]

Percentage of Harvard Law Classes Entering Given Fields

Field	1956-1959	1966-1969
Law firms	51.5	45.5
Business concerns & Banks, Accounting & Insurance	6.5	7.0
Government	7.0	4.25
Judicial clerkships, Teaching, Research and Study	11.5	18.25
Legal services, Fellowships, Peace Corps and Vista	0.0	6.0
Eligible for military without jobs	19.75	16.5
TOTAL REPRESENTED	96.25	97.5

Harvard's placement officer also indicated that many going into firms are asking for, and in some measure, receiving permission to use some firm time for public service activities.[20] This may simply be a contemporary version of youthful idealism and may represent a relatively brief phase in the life cycle of the young. For some it will be a more enduring commitment, however, and in any event even temporary service may provide a substantial amount of help in programs designed to extend various social benefits to the disadvantaged.

B. New Careers: General Considerations

Only in the last two or three years have leading groups in the profession begun thinking about the basic concept of training people who are neither lawyers nor law students to handle some legal problems. In August, 1968, the House of Delegates of the American Bar Association endorsed attorney use of non-lawyer assistants by resolving:

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[19] HARV. L. REC. October 9, 1969, at 3 col. 1.

[20] *Id.* at 3, 15.

> (1) That the legal profession recognize that there are many tasks in serving a client's needs which can be performed by a trained, non-lawyer assistant working under the direction and supervision of a lawyer:
>
> (2) That the profession encourage the training and employment of such assistants. . .

Also, in August, 1968, the A.B.A. set up the Special Committee on Lay Assistants for Lawyers.[21]

A report by the American Assembly on Law and the Changing Society stated:

> Law Schools, in cooperation with the organized bar, should consider the development of education and training programs for subprofessional personnel. People have needs for domestic relations counseling, consumer advice, small accident reparations, and small claims settlements which the organized bar is not able to provide sufficiently under the present structure of legal practice.[22]

The "Report of the Chairman of the Committee on Curriculum" at a conference of the Association of American Law Schools, held at the University of Denver in 1968, recognized that "the need for highly professional lawyers and the lack of an adequate supply raises the question of increased reliance by the profession on para-professional (sometimes called sub-professional) personnel to perform less demanding tasks now undertaken by licensed attorneys."[23]

The belief that paralegal and sublegal occupations should be developed is not confined to certain elements within the legal profession. The federal government, through the National Commission on Technology, Automation, and Economic Progress, has called for the designing of more than 5 million socially useful subprofessional jobs in a wide variety of fields. In sympathy with these needs, the United States Congress passed the Scheuer-Nelson Amendment [24] which provided $70 million for the development of this goal.[25] These occupations promise to employ some relatively undereducated and unskilled persons in needed and personally rewarding jobs.

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[21] *Proceedings of the House of Delegates: Philadelphia, Pennsylvania,* August 5-8, 1968, 54 A.B.A.J. 1017, 1021 (1968).

[22] THE AMERICAN ASSEMBLY ON LAW AND THE CHANGING SOCIETY, REPORT OF THE AMERICAN ASSEMBLY ON LAW AND THE CHANGING SOCIETY 7 (1968).

[23] Association of American Law Schools, Report of the Chairman of the Committee on Curriculum 1 (Nov. 1968). *See also* UNIVERSITY RESEARCH CORP., PARAPROFESSIONALS IN LEGAL SERVICES PROGRAMS: A FEASIBILITY STUDY 14-19 (1968) [hereinafter cited as PARAPROFESSIONALS], for others who have called for thought and action on this subject.

It must be recognized that any program for extending the supply of legal services will be greeted with somewhat less than total enthusiasm by some segments of the licensed legal profession.[26] Many attorneys are underemployed (at least in a qualitative sense) and perform services that do not require advanced professional education.[27] One can expect grumblings and perhaps court actions from some unauthorized practice committees, but that is not likelv to prevent progress.[28]

All occupations are threatened with obsolescence, as noted earlier, and, ironically, the more highly specialized the original occupational qualifications, the higher the risk of obsolescence. Refurbishing will, therefore, be essential for the underemployed attorney. But increasing specialization will necessarily become a part of that process, and as the attorney moves tc increasingly professional tasks there will be room left for subprofessional and complementary occupations.

Hopefully, following the pattern established by *New Careers,*[29] at the same time that training for paralegal and sublegal careers is begun, career advancement "ladders" will be established which will eventually enable trainees to become full-fledged professionals – although the training for lawyers is so long and rigorous and the structure of the profession is such that building a career ladder all the way up to the status of full attorney can only be a long-range goal. The development of new careers, and particularly the notion of "career ladders," is bound to be difficult, as unstable careers increasingly become the norm and adult retraining a normal corollary.

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[24] Economic Opportunity Amendments of 1967, Pub. L. No. 90-222, 81 Stat. 672. (codified in scattered sections of 42 U.S.C.)

[25] Harrington, *Introduction* to F. RIESSMAN, NEW CAREERS: A BASIC STRATEGY AGAINST POVERTY 3, 7 (undated).

[26] *See supra* Section IV.

[27] *See supra* Section 1. We have used Carlin's book several times. As he notes, many lawyers perform essentially paralegal work. It is our hope that they will hire lay assistants and become more efficient and affluent.

[28] There is some evidence to suggest that much of the motivation for unauthorized practice actions by bar associations is economic. These actions were most numerous in the 1930's (*supra*, Section II B) when the bar's concern for its professional status and for the public interest was sharpened by hunger. It may be the marginal lawyers who press unauthorized practice committees for action, but if they begin to use lay assistants, or if the more affluent attorneys, who are also more influential in bar associations, support the use of sublegals, the threat of unauthorized practice actions will not be severe.

[29] A. PEARL & F. RIESSMAN, NEW CAREERS FOR THE POOR 258 (1968).

As Pearl and Riessman note, "the chance for truly substantial advancement in job station is crucial to the new career concept."[30] They make clear, and we agree, that the ultimate goal of new careers is to establish another path of upward mobility in our society. Professional status (that of the lawyer, in this case) might then be attained by an able new careerist through a combination of education, on-the-job training and experience gained in intermediate positions, not solely through seven years of higher education. However, the prospects for creating such a ladder from sublegal to lawyer in the near future are dim. Part of the difficulty of career ladders will be the small number of sublegals in a particular office. Certainly in the beginning, experimentation will be required to develop job titles, job status levels, and salary increases. But the fundamental elements are the opportunities to gain in responsibility, status and salary, and to have access to training which would allow one to advance. These can be present, even in small law offices. We neither expect law offices to begin with any lock-step civil service kind of arrangement, nor expect the American tradition of geographical and job mobility to be denied by an inflexible "track system" of sublegal occupations, which would prevent a talented sublegal from moving from one organization to another.

The social and psychological implications of reorganizing legal offices to use paralegals and sublegals are considerable, though variable. A few potential problems should be noted.

Lawyers must be prepared to standardize tasks and present them logically to sublegals, who may have relatively little legal background. Until other training programs are established, lawyers must take responsibility for training sublegals. They must be willing to delegate duties to trained sublegals and to supervise them.

Status conflicts are bound to occur between office personnel over newly created positions. Secretaries may be jealous of one of their number who is given special training and elevated. In this situation it might be preferable to bring in an outside person to fill the new position. Secretaries who are elevated must re-evaluate their job, and must analyze problems more critically and be more creative.

The experience of the Denver Legal Aid Society is an example of the socio-psychological aspects of structural change and mobility. The Society Director asked for a staff attorney to volunteer to be domestic relations specialist. One lawyer volunteered, but only if these conditions were met: he was to be appointed "Director of the Domestic Relations Divison" (D.R.D.), which was to be a semi-autonomous unit within Legal Aid, complete with its own cards and letterhead. He was to have his choice of an office, an investigator (a sublegal), and a secretary. The investigator was to become "Domestic Relations Special Investigator," the secretary "Executive Secretary to the Domestic Relations Divison;" all three were to receive pay increases.[31]

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[30] *Id.* at 12-13.

No program aimed at developing new careers, particularly for the disadvantaged, can hope to undo all past mischief. The poor, who have grown up without hope of a job in the "upper world," must be provided realistic opportunities for jobs,[32] but paralegal "careers," even assuming a career ladder, presuppose a secondary education; thus persons lacking functional literacy must be brought up to at least that level before beginning paralegal or sublegal training.

Inevitably, new technical occupations will generate occupational associations, seek a university base, attempt (probably successfully) to get licensed in their practice, and thus climb the ladder of professionalism.[33] Such a course of events will not only challenge existing professional claims to territoriality, but will also set up new criteria of occupational status that may not be totally consistent with public welfare. We shall have to go through that process, time after time, for that is the process of professional upgrading. That is precisely the way in which the legal, medical, engineering, and academic fraternities have behaved, not to mention life underwriters and securities analysts.[34]

Recruitment to new careers in legal services will present serious problems, some of which have been indicated previously. Aside from functional literacy and capability in a motivational as well as an intellectual sense, one would hope that recruitment could identify interested, as well as talented, applicants. A subtlety of motivation is discernible here. The ablest members of a disadvantaged group will want to escape identification with their origins and succeed in the larger competition, despite early handicaps. It follows that recruits to new careers (as distinct from established careers) from disadvantaged groups are likely to be somewhat off-grade by the usual criteria of academic achievement and, inevitably aware of the fact, more than usually truculent.

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[31] Conversation with Howard Rosenberg, Esq., Director, Legal Aid Society of Metropolitan Denver, Colorado, November 7, 1969.

[32] This would seem to be so widely accepted as to require no footnote. It is, in fact, one – perhaps *the* – crucial basis of much of the war on poverty. As the Council of Economic Advisers put it in THE ECONOMIC REPORT OF THE PRESIDENT 55 (1964), "The poor inhabit. . .a. . .world apart. . .where Americans are literally concerned with day-to-day survival. . .where peace and privacy must be sacrificed to get help, where honesty can become a luxury and ambition a myth. Worst of all, poverty of the fathers is visited upon the children."

[33] We have commented on this process earlier. *See Supra* Section I. Friedman, *Freedom of Contract and Occupational Licensing – 1850-1960,* 53 CALIF. L. REV. 512 (1965), points out that licensing is the culmination of the progression and provides the emerging profession with an institutionalization, to a lesser or greater degree, of its goal – occupational status and economic security.

[34] Barron, *Business and Professional Licensing – California, a Representative Example,* 18 STAN. L. REV. 640 (1966) gives examples of the behavior of such professions in California. He reiterates the point made by Friedman, discussing the "prostitution" of the licensing system; that is, the ways in which it is used not only to raise the applicant's status but also to "fix prices, divide markets, or restrict entry."

C. New Careers: Normative Targets

This report has proceeded on the assumption that equal justice must be provided all American citizens. Specifically, legal needs presently unmet, especially those of the poor, must be filled at a price the clientele can afford. Many of the needed legal services can be performed competently by someone with less than a complete law school education and, with suitable and relatively brief training, can be performed by relatively disadvantaged members of the community. The thrust of our thinking moves in two directions at once: more efficient, less expensive legal services for those who do not receive them now, and the creation of new careers, especially for those who are presently unemployed or underemployed.

The new paralegal occupations created must be true careers, not mere jobs. Career ladders must provide opportunities for the paralegal to rise commensurate with his abilities and continuing training. New occupations must not be merely jobs formed by separating the menial tasks of another job and assigning them to the new occupation, with only the prospect of perpetual routine and perennial stagnation.

Ideally, it would be handy if all the unmet legal needs in American society, especially those of the poor, could be met by new careers for the poor. Yet that line of thought contains a possibility of major error in policy. Stated bluntly, the error would be the comfortable and wicked assumption that the poor deserve only off-grade services.[35] Our research has shown, and experience with neighborhood law centers confirms, that there is an

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[35] We have alluded to this assumption before. *Supra,* Section I, note 31. As was pointed out, the legal problems of a welfare recipient, for instance, may be extremely complex and his stake in the resolution high. There may often be dire need for a lawyer's services.

The crucial point is made by Comment, *Neighborhood Law Offices: The New Wave in Legal Services for the Poor,* 80 HARV. L. REV. 805 (1967). The poor, whether they deserve it or not, often get off-grade legal services, when they receive any services at all. Indeed, implicit in the legal aid concept is the idea that it is perfectly acceptable for students to practice their skills on indigents. The poor would likely benefit most from paralegals, as the present costs of some simple legal services excludes them. The services of the paralegal or sublegal, however, are limited to relatively simple, routinized exceedingly high demand, especially among poor people, for quick, inexpensive, routine services whose present cost and inaccessibility deny them to many people. Among these services are divorces, advocacy in dealing with various government agencies (Welfare, Social Security, Internal Revenue Service, Veterans' Administration[36]) and bankruptcy.[37]

Services provided by paralegals, though high volume and inexpensive, should be of equal quality to similar services provided by lawyers. We have found[38] that lawyers often perform essentially paralegal functions. In breaking down and standardizing these functions, the profession should make certain that they will be executed as well – or better – by paralegals as by bored and unchallenged lawyers. Of course, newly-created paralegals and sublegals would be obliged to comply with existing legal ethics. The confidentiality of the lawyer-client relationship would be maintained in contacts between client and sublegal, just as the essence of the patient-doctor relationship is preserved in intercessions by the nurse. The work of sublegals would be thoroughly supervised and checked by lawyers, and lawyers would be called upon to execute court actions, in compliance with law, in cases where sublegals have done most of the routine preparation. This preceding requirement does not preclude the hope that in certain standardized cases, such as uncontested divorce and bankruptcy, the law might be changed either to permit paralegals to make appearances in court or that the procedures might be made administrative and removed from court, reducing both the cost of services and the needless waste of lawyers' valuable time. In addition, changes in the *Canons of Ethics*, without altering the basic ethical responsibilities of the lawyer, might facilitate the use of paralegals and broaden their potential responsibilities.[39]

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procedures which, though cheaper, would be as good as or better than similar services performed by a bored lawyer, or an inexperienced student. Certainly, persons who are not poor might well wish to use the efficient, inexpensive services of a paralegal for simple procedures. Finally, use of paralegals could free more lawyers' time to devote to more complicated legal problems, including those of the poor.

[36] *See supra* Section III C.

[37] *See supra* Section I, note 46 and Whelan, *Bankruptcy – A Remedy for the Financially Distressed Client*. 35 D.C.B.J. 29 (1968). The problem of bankruptcy for the poor has too long been treated in isolation. It is only beginning to be recognized that budget planning and debt management are equally, if not more crucial. A poorly advised bankruptcy may only beget the need for another all too soon if the root causes high interest rates; too easy and too alluring time payments for over-priced, often unneeded articles presented by smooth salesmen; garnishments secured by court actions run past uncomprehending poor people and making spiraling debt unavoidable – are not attacked. Paralegals can help, not only in processing bankruptcies but also in informing poor people of their rights in illegal sales and garnishment proceedings.

[38] *See e.g.*, J. CARLIN, LAWYERS' ETHICS – A SURVEY OF THE NEW YORK CITY BAR (1966); J. CARLIN, LAWYERS ON THEIR OWN (1962); *supra* Section I.

The legal needs of the poor will often require fully professional services, and those should not be denied on the basis of inability to pay at standard rates.[40] Hopefully, the creation of paralegals will accompany and reinforce other changes in the legal profession brought on by the realization that the present system does not effectively and fairly meet the needs of all Americans. The recognition of specialization is one of several such changes we have mentioned. To an extent, especially in certain areas, changes in the official position of the bar will be necessary if paralegals are to be effective. The creation of new legal careers should begin where possible now; it can fulfill its potential only if it is sponsored by the bar and buttressed by changes in the legal profession.

D. Place and Type of Training

Law schools might attempt to emulate leading medical schools in providing training for paralegal practitioners.[41] This has the immediate appeal of providing an important and worthwhile professional and public service, and the somewhat subtler appeal of asserting the professional claim to ascendancy over the subprofessional, in addition to providing some prestige of association to the fledgling occupation. Some subprofessional training should undoubtedly take place in the intellectual homeland of the professionals, the law schools. Law schools have typically avoided using teaching assistants, even at the cost of having classes of 100 or more students.

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[39] Early, *The Need For Legal Nurses*, 74 CASE AND COMMENT 34, 42 (1969), gives a provocative discussion of the ethical considerations involved in the creation of a legal technician to work in law offices. Early concludes that "without belittling the importance of the lawyer-client relationship, . . .homage should not be paid to the... relationship as an end in itself, but as a means of better serving the Bar, and more important, the public."

[40] We have treated this notion several times. *See supra* note 35 and *supra* Section I, note 31, and especially our formulation of the "justice package," (Section III).

[41] Precious little has been written on the notion of the paralegal and less still on the question of where such practitioners should be trained. Obviously, both remain touchy questions. About as far as the organized legal profession has gone in recognizing that law schools have some responsibility to surrounding communities other than merely producing lawyers, has been the now half-century old legal aid program. Legal aid recognizes that poorer segments of the community have legal needs not filled by the constituted bar. The program is justified, however, by the conjunction of that fact and the realization that law students will become lawyers and need some realistic client contact. Other motives continue to sustain legal aid, not the least of which is, as we have noted, the lawyers' desire to avoid as much unprofitable business as possible. Some innovative articles have been written on legal aid and legal internship, among them Brennan, *Law School of Tomorrow*, 9 N.H.B.J. 6 (1966), Everett, *Duke Law School Legal Internship Project*, 18 J. LEGAL ED. 185 (1966); Cleary, *Supra*, note 18. More thinking must be done, however, about turning the law school into a true college of law.

But for some training, team-teaching by a number of advanced law students may be more effective than traditional law teaching. Students may be perfectly competent to teach the basic elements of a small area of law. The law student may be a more motivated teacher and engender more enthusiasm in his class. In other cases, it may be lawyers from the community who would be the best teachers, especially for the sublegals. In any event, an evaluation is necessary to decide who would make the best teacher in each set of circumstances.

Most law schools are radically divorced from the practice of law, and therefore with respect to public policy one should (a) insist that any law school professing to give paralegal training (or, for that matter, legal training) have standardized ways of involving its students in actual practice; (b) take a careful look at other education settings. Legal training for subprofessionals and those in complementary occupations may well be introduced into other professional schools (for example, social work, urban affairs, engineering, and business administration) but also into liberal arts colleges and two-year community colleges (with specific occupational goals). Community colleges are new and not burdened by tradition or aspirations to classicism. As a result they have often been more receptive both to vocationally oriented courses, and to new teaching methods.[43]

With respect to professional training, it has come to be recognized (especially in medicine and social work) that the students' training should not be solely at the hands of professional practitioners.[44] The University of Denver College of Law was among the first to use non-lawyers in legal

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[42] Again, far too little research has been done. One of the few articles written on the paralegal, Sparer, Thorkelson and Weiss *The Lay Advocate*, 43 U. DET L.J. 493,500 (1966) makes clearly a point we have expressed: "the private social worker who advises an applicant that he should apply, how to apply, what to answer and how to appeal if the application is rejected is giving 'legal advice.' "

As we have stressed, social workers (and many other occupations) practice law and need to know some law, whether they presently receive such training or not. There is no reason why that training should not be given in the profession's own school. In addition, there is need for paralegals with more specific legal training to assist social workers and their clients in relations with welfare departments. These paralegals could reasonably be trained in schools of social work. Similarly, those specializing in urban renewal, traffic problems and the like might be given education at engineering schools; paralegals specializing in any area of urban affairs at urban affairs schools; consumer problems specialists at business schools; and a wide variety of paralegal vocations might be offered at liberal arts or community colleges, as opposed to already-crowded law schools.

[43] For instance, of all the post-secondary institutions in Denver, the Denver Community College was most helpful to the Denver New Careers program. One innovation was that professors taught some courses in the New Careers training centers, away from the college and in an atmosphere which the New Careerists found much more comfortable than college classrooms. The courses drew heavily on the experiences of the students, with theory and reading growing out of those experiences, but with college credit being given.

training and has found that scholars from other disciplines can, indeed, make significant contributions to professional legal education.[45]

Training of paraprofessionals may, then, properly take place in the law school setting (assuming opportunities for experience in actual practice) or by law professors or their well-trained equivalents in other settings (but with the same stipulations regarding opportunities for experience.)[46]

Any attempt to think of new performers of legal services must attend to the length and type of training required. We must recognize the great variety of paralegal jobs awaiting development. Given a number of years, we might see a proliferation of occupations resembling, on a smaller scale, the medical profession. Considering the variety, one might find that the divorce specialist required only a few weeks training, while the competent estate planner would require a year or more of formal legal training.

At present we can only identify a few of the obvious factors that would make possible less than the three years of legal training. Jobs requiring the least amount of training would be the most routine, with the fewest, most standardized steps. They would require the practitioner to provide almost identical services time after time to clients whose needs were limited and virtually identical (e.g., uncontested divorces). These jobs should require no decisions from the paralegal and present him with almost no unexpected circumstances to alter the procedure. Obviously, high volume would call for a process to be split into highly specialized functions, each with the above characteristics and each capable of being performed by a paralegal with limited training.

E. Examples of Jobs to Be Developed

Despite the impossibility of listing, much less describing, the various new careers which might be developed in the law, we shall attempt to consider a few jobs, in the hope of provoking thoughts among those who implement new careers.

An example of the development of a sublegal job might be as follows: a

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[44] *See, e.g.*, Pincus, *Reforming Legal Education*, 53 A.B.A.J. 437 (1967); Johnstone, *Models for Curricular Reform*, 21 U. MIAMI L.R. 544 (1967).

[45] One of the most obvious signs of the desire of the College of Law to link law and the social sciences through the teaching of law students by non-lawyers is the Administration of Justice Program headed by Gresham M. Sykes, a sociologist. Of the College's 29 full-time faculty members, four have no law degree at all and nine more have advanced degrees in subjects other than law. UNIVERSITY OF DENVER BULLETIN: COLLEGE OF LAW, vol. 69, no. 7, December 30, 1967 at 33-38.

[46] Early, *supra* note 9, at 39-40 makes suggestions for the training of paralegals to work in law offices; UNIVERSITY RESEARCH CORP., PARAPROFESSIONALS IN LEGAL SERVICE PROGRAMS: A FEASIBILITY STUDY 92-93 (1968) [hereinafter cited as PARAPROFESSIONALS].

researcher (who would not necessarily be a lawyer) and a number of lawyers specializing in personal injury would discuss the procedures for developing personal injury files. The researcher would become familiar with, collect samples of, and possibly standardize the contracts for contingency fees, the form letters used in getting copies of the records and bills necessary for special damages claims, and the preferred formats for complaints. He would also gather information about interviewing and investigation techniques. After this investigation – and final approval of the findings by the consulting group – the researcher would train students in this particular area of the law. The training would emphasize work as performed in law offices. The curriculum would include copies and explanations of the forms used in the various offices. Training would include a detailed study of the concept of negligence and its application, and possibly a study of civil procedure.

At some early stage, perhaps as soon as the student begins his sublegal training, he could start to work for his post-training employer, starting perhaps as a file clerk and typist. As the student gains competence, he could do preliminary interviews, gather information for the file, and write drafts of letters and complaints. As part of his further training, the student might be taught techniques of negotiation, and about the recoveries one might expect from certain sets of factual situations. At this stage, the student could begin to work more closely with the attorney, handling the major part of most cases which might be settled out of court.

Insurance company lawyers already have much help of this nature from insurance adjusters.[47] Developing entry into this kind of occupation for Negroes and Mexican-Americans would be novel, however, and helpful to the companies, whose relations with minority communities would be improved. Tort claims adjusters should also be used more in private attorneys' officers, and adjusters' use should be cultivated in negotiations with auto accident victims. The victim, who is experienced neither in accidents nor law, should be able to hire a non-lawyer experienced in both to bargain with the company's adjuster. One major caveat is necessary. Because of the possible adoption of the Keeton O'Connell plan or some variation thereof, the wholesale training of auto accident claims adjusters may be unwise.[48] Certainly training of adjusters should not occur in the absence of an ear to the door of the state legislature.

Paraprofessionals suggests the claims adjuster might also be used as the model for legal services paralegals who can negotiate small claims on behalf of consumers, tenants, and welfare recipients.[49]

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[47] PARAPROFESSIONALS 92-93.

[48] R. KEETON & J. O'CONNELL, BASIC PROTECTION FOR THE TRAFFIC VICTIM: A BLUEPRINT FOR REFORMING AUTOMOBILE INSURANCE (1965).

[49] PARAPROFESSIONALS 93-95.

In working with the Denver Legal Aid Society, the University of Denver College of Law discovered a major reason why sublegal training, specifically of divorce specialists, is needed. The caseload of uncontested divorces was so high that every Legal Aid attorney handled many of them. It is estimated that divorces make up 40% – 50% of legal aid cases, and nearly all are uncontested.[50] Every attorney had to be prepared to interview, supervise the preparation of the necessary documents (of the approximately ten different documents, many were prepared differently at each different branch office), file the complaints and motions, answer all the client's questions until the decree hearings, and appear in court. Because lawyers did almost all the work, and the system was not organized, lawyers wasted a tremendous amount of time.

Certain Legal Services Programs, notably in California, have refined the uncontested divorce process far more than Denver Legal Aid. In the Oakland and Berkeley programs, an attorney may spend less than fifteen minutes on a case before the courtroom hearing.[51]

Of course the resolution of one legal aid caseload problem, like divorce, may mean only that attorneys will have the time to be swamped by another problem, such as garnishments or bankruptcy. The need for personal bankruptcy and debt counseling is probably now just overshadowed by other crises. Personal bankruptcy has grown tremendously in the United States, from 33,392 petitions filed in 1950 to 192,354 in 1966.[52] Volume would make it practical for nearly every legal aid office to train a subprofessional to spend much of his time preparing forms on bankruptcies for attorneys. Since bankruptcy is a federal procedure, the forms and procedures applicable to one state are applicable elsewhere. Sublegals could help in the most difficult part of preparing the case – gathering all the records, debts, and other information from the client. A patient interviewer, with a checklist of all the types of information needed for the attorney to make the decision whether to file, is what is needed.

Garnishments are another common legal aid problem. In the Chicago area alone, garnishments have increased from 59,000 in 1962 to 73,000 in 1966.[53] Legal aid offices can often negotiate to prevent garnishments, if they learn of the debt soon enough and, in some cases, can overthrow the judgment on which the garnishment is based, because of lack of service of process or other defects. Paralegals or sublegals could help obtain the facts and information, and could negotiate some of the claims. In a Denver neighborhood office, debt cases made up about 20 per cent of the caseload.[54]

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[50] *Id.* at 65, citing Mattison, Lawyers and the Poor: Where do we Go From Here, 30 (unpublished, May 1968). Conversation with Howard Rosenberg, Director of the Metropolitan Denver Legal Aid Society, Nov. 7, 1969.

[51] ABSTRACT 67-8.

[52] ABSTRACT 499.

[53] D. CAPLOVITZ, THE POOR PAY MORE xviii (1967).

Much debt counseling by attorneys comes too late to help the client avoid over-borrowing, with the result that creditors sue, forcing the client eventually to declare bankruptcy. Here the combination of group legal services and the use of sublegals could be of great aid in preventing problems. The lawyer and sublegals working for a group could spend their slack time educating the group members in the dangers of too much debt or other legal problems. The sublegal may have the additional advantage in debt cases of being from the same socio-economic background as the client. Effective communication and rapport may be much easier to establish.

The public assistance system is only one of many examples where the client needs help in dealing with governmental executive agencies. Public assistance, which includes old age assistance, aid to families with dependent children, aid to the blind, aid to the permanently and totally disabled, and general assistance cases, increased in dollar value from $2.5 billion in 1950 to $6.3 billion in 1966.[55] Because few lawyers have examined the badly organized, badly indexed, multi-volume sets of statutes, regulations, and guidelines governing public assistance – or even made an effort to become as expert as the experienced welfare worker – welfare workers and administrators have governed the system. Welfare clients have generally been incapable of challenging either the procedure or substance of decisions affecting them. In the last few years, some clients have organized into local groups of the National Welfare Rights Organization (N.W.R.O.) These groups have studied the regulations and trained welfare clients to represent other clients at administrative fair hearings. In many cases, these paralegal advocates have been embarrassingly successful from the point of view of welfare departments.[56] Perhaps because of a realization that clients were not getting all they deserved under the law, perhaps partially because of the demonstration of inequity by advocates of the N.W.R.O., the Department of Health, Education and Welfare has promulgated requirements that clients be afforded free representation by counsel at administrative fair hearings beginning in 1970.[57] The H.E.W. program will also increase funding to legal aid societies to provide services for former, present, and potential welfare recipients.[58] Whatever the reason, attorneys will now have to prepare a gigantic number of hearings. Certainly sublegals could be employed to investigate and prepare the vast bulk of the cases for the lawyers.

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[54] G. Sykes, Legal Needs of the Poor in the City of Denver 47 (mimeograph, to be published in 4 L. & SOC. REV. No. 2, Nov., 1969).

[55] ABSTRACT 304.

[56] Interview with Alfred A. Fothergill, Institute for Regional Development, Ohio University, Athens, Ohio, in Denver, Colorado, April, 1969.

[57] *See* Robb, *HEW Legal Services: Beauty or Beast?*, 55 A.B.A.J. 346, 347 (1969).

Public assistance is just one of many areas where the client needs help in dealing with administrative agencies. Agencies, because they have discretion in making decisions, are seen as antagonists by those who do not get the decision they want from the agencies. Where lawyers are not commonly used in dealing with an agency, trained and experienced advocates before the agency should be available. Agencies would also benefit from more employees with some legal knowledge in positions as administrative assistants, researchers, and investigators,[59] and persons skilled in guiding the clients of these agencies through the necessary procedures to get action and justice. Administrative rules of established public agencies often serve only the convenience of the agency in its internal operations and have little or no relevance for the prompt delivery of services to clients. A consumer representative, ombudsman, or "next friend" for clients may therefore be an important addition to both public and private service organizations.[60]

One example of the use of paralegals in the private sector, as representatives before administrative agencies, is the unemployment compensation consulting firm, which represents employers in unemployment cases so that they may keep their unemployment insurance rates as low as possible. The unemployment paralegal is usually not an attorney but is trained specifically in unemployment problems. He represents the employer and argues his case before the hearing examiner and the industrial commissioner. This, then, is a situation in which a corporation represents a corporation, as most compensation consulting companies are corporations designed to provide such services to employers only.[61]

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[58] *Id.* at 347.

[59] Williams, *The Use of Nonlegal Personnel in a Law Office,* 6 PRAC. LAW. Oct. 1960, at 13.

[60] As *supra* note 42 points out, social workers essentially perform this function now for welfare applicants but often lack requisite legal training. Most other public agencies desperately need such "next friends" if all are to receive justice. While the poor would be the chief beneficiaries of such agents, the possible area for their use is not limited to the poor. Tax accountants *(Supra* Section I, note 47,) serve as intermediaries between many citizens and the Internal Revenue. There are possibilities for the creation of similar, specially-trained paralegal vocation to assist people in their dealings with other public agencies.

Consumer representatives for private service organizations are less vital only to the extent that their services are provided to people wealthy enough to hire counsel or more sophisticated in their dealings with bureaucracies than are poor people. There is vast potential (*supra* note 37) for paralegals who can serve as intermediaries between consumer and private groups, such as appliance dealers or loan companies, and who can advise consumers of their rights, helping them battle frauds and garnishments.

[61] Two firms in Denver, Colorado, providing these services are Schmitt & Company and Rifkin & Associates.

Section V

The occupations mentioned above are only a sample of the occupations that need development. Naturally, given the structure of American society, a sufficient demand for services will produce a supply of people to perform them, however badly trained or otherwise undesirable. The danger is that profit-oriented training courses, ill equipped to teach the necessary skills, will emerge. And, in the absence of well designed educational programs, people who want to acquire the skills demanded by the new job opportunities will have no alternative but to enroll in substandard training courses. In the future, foreseen needs may lead both to sensible educational means for supplying suitable trained persons and to sensible organizational contexts in which the trained talents can be usefully and constructively employed.

We hope that lawyers and law schools will take a broad view of future needs, and will analyze carefully the whole legal system. Adding a few high grade secretaries will not suffice. Reorganization of the professionals and non-professionals, lawyers and non-lawyers within the system will be necessary. Lawyers need to learn management skills in order to use their assistants efficiently and they need to learn to delegate routine work and responsibility. While lawyers are relearning their roles, they must assist in the recruiting of sublegals, the examination of educational curricula, the development of on-the-job training, and the evaluation of how legal services can be supplied to the target population. The University of Denver hopes to help begin this legal systems analysis by attempting to develop a small number of possible paralegal occupations, keeping these considerations in mind: (a) what can be done at all; (b) what can be done in a law school setting; (c) what can be done with the aid of a responsible and public-spirited law school, either through some existing agency, or through an agency created by the law school.

Some social experimentation will be involved in the establishment of "new careers in law." And some of the experiments will probably fall short of announced objectives. But there is no tolerable alternative to making the attempt.

APPENDIX I

SOME ORGANIZATIONAL AND OCCUPATIONAL CONTEXTS OF "LEGAL" SERVICES

We present here, in outline form, some of the occupations performing "legal services" (including professional lawyers) now encountered in American society, grouped somewhat arbitrarily in terms of the settings in which they may be found. In Section I B, a similar but briefer outline is presented exemplifying the ordinary adult's possible encounters with legal services. Here we attempt to portray some of the established organizational and occupational settings in which legal services are performed. This way of looking at the subject reconfirms the great extensity of legal services, the variety of ways in which law is practiced.

- GOVERNMENT: Executive Branch
  - Administrative and Community Agencies
    - Lawyers, officially or unofficially specialized
    - Substantive experts (e.g., economists, engineers, etc.)
    - Social and welfare caseworkers
    - "Lay" specialists
    - Adoption agencies
    - Community action agents
    - Housing specialists
    - Legislative specialists
    - Secretarial and clerical
  - Law Enforcement
    - Civil and military police
    - Crossing guards, meter maids, etc.
    - Guards, turnkeys, wardens, and executioners
- GOVERNMENT: Legislative Branch
  - Legislatures, City Councils, County Commissioners
    - Legislators (lawyers are over-represented)
    - Staffs: may be "lay" or "professional"
    - "Lay" specialists in legal drafting
    - Lobbyists
- GOVERNMENT: Judicial Branch
  - Judges
    - Local
      - Justices of the Peace

      - Police Magistrates
      - Municipal Judges
      - Juvenile Judges
    - State
    - Federal
  - Masters
  - Referees
  - Lawyers
  - Law students
  - Probation and parole officers
  - Court clerks
  - Bailiffs
  - Court stenographers
  - Secretarial and clerical services
  - Bail bondsmen
  - Process servers
- LAW FIRMS AND LEGAL AID
  - Attorneys of various grades and specialties
  - Law students
  - Librarians
  - Investigators
- OTHER PROFESSIONS
  - Engineers: Land acquisitions
  - Architects: Zoning regulations, construction codes, arbitration of disputes
  - Certified Public Accountants
  - Urban planners
  - Marital counselors
  - Physicians (forensic medicine, medical examiners)
  - Coroners – lay or professional
  - Social scientists
  - Publishers
  - Clergymen
  - School administrators
- BUSINESS I: Internal Purposes
  - Bookkeepers, Accountants, Auditors
  - Investment advisors, including mortgages
  - Personnel administrators
  - Labor relations
  - Private guards and investigators
  - The "Law Department" (often for "external" purposes in keeping the business out of trouble or prosecuting its rights)
    - Lay assistants, secretarial/clerical
- BUSINESS II: External Services
  - Credit counselors

Contexts of "Legal" Services

- Collection agencies: lay collectors
- Notaries Public
- Liability insurers:
  - Agents
  - Claims adjusters
  - Attorneys
- Life insurers and Mutual Funds salesmen
  - Agents (estate planners)
  - Secretarial and clerical
  - Actuaries
  - Attorneys
- Banks: Trust and investment advisers
- Tax firms
- Auditing and accounting firms
- Title insurers:
  - Attorneys
  - Assistants (including searchers and abstractors)
- Real estate brokers, developers, contractors
  - Salesmen
  - Brokers
  - Landmen
- Securities dealers
- Labor and management consultants
- Arbitrators
- Detective agencies

Appendix II

SELECTED STATE LICENSING STATUTES

INTRODUCTION

This appendix illustrates selected licensing and training requirements for certain occupations in six states. The states were chosen with a view to being representative of a cross-section of the country as to size of the state and relative sophistication of the licensing law.

The particular occupations chosen are also intended to be representative of the occupations deemed by state legislatures and/or professional organizations to require such standards. Most of those chosen also represent occupations which, to a certain extent, deal with legal problems.

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Appendix II

SELECTED STATE LICENSING STATUTES

A. CALIFORNIA STATUTES

License	Issuer
1. Physicians & Surgeons	Board of Medical Examiners (BUS. & P. Sec. 2004)
Requirements	**Issuer's Qualifications**
1. Complete form furnished by board. 2. Such information concerning medical instruction and preliminary education as board "may by rule prescribe, in addition to the information required by law." 3. "Testimonials of good character satisfactory to the board." 4. Diploma from approved school – affidavit that: a. Applicant is person named on diploma b. He is lawful holder of same c. Not procured by fraud or misrepresentation 5. Three year resident course of college grade, or its equivalent, including subjects of physics, chemistry and biology before commencing study of medicine. 6. Successful completion of 4 year medical course 7. Total no. of hours "of all courses shall consist of a minimum of 4,000 hrs". 8. Adequate instruction in specified medical courses 9. One year internship at approved hospital 10. Successfully complete exam in specified subjects	1. 11 members appointed by governor (From 1-15-63 to 1-15-71, one additional member "who has elected to practice using the term or suffix 'M.D.'") 2. "one of whom shall be a public member" 3. Citizens of state at least 5 years immediately preceding appointment 4. Licensed physicians, except public member who may not be. 5. "owns" no interest in any college, school or institution engaged in medical instruction 6. Not more than two members of the board may be full-time members of a medical school faculty. (BUS. & P. Sec. 2100, 2100.5, 2101)

(CALIF. BUS & P. Sec. 2168, hereinafter cited by particular code and section number; 2168, 2168.5, 2191, 2192, 2288.)

License

2.Collection Agencies

Requirements

1. U.S. citizen
2. At least 21
3. "of good moral character"
4. "Establish to the satisfaction of the director that no fact, circumstance or condition exists which would justify refusal of registration under section 6894.7." (Sec. 6894.7 reads "After the hearing the director may refuse to register an employee. . .if the individual has committed any act which would justify refusal of permission to take the collection agency examination and to issue a qualification certificate. . .")
5. "bona fide resident" of state continuously at least 2 years immediately preceding date of filing of application.
6. Pass required exam
7. Must not have:
    a. "committed or done" any act which if committed or done by licensee, would be grounds for suspension or revocation
    b. "committed or done" any act involving dishonesty, fraud, or deceit "whereby the applicant has been benefited or where some injury has been sustained by another."
    c. "Entered a plea of guilty or nolo contendere to, or been found guilty of, a felony or crime involving moral turpitude arising out of, or in connection with, or related to the activities of such person in such a manner as to demonstrate his unfitness to be or become a licensee, and the time for appeal has elapsed or the judgment of conviction has been affirmed on appeal irrespective of an order granting probation following such conviction, suspending the imposition of sentence, or a subsequent order under the provisions. . .of the Penal Code allowing such person to withdraw his plea of guilty, or setting aside the plea or verdict, or dismissing the accusation or information."
    d. Been convicted of illegally carrying or possessing a dangerous weapon.
    e. Been refused a license or registration under this chapter or had a license or registration revoked unless previously licensed under this act.
    f. Been an officer, director, partner or mana-

Issuer

Chief, Collection Agency Licensing Bureau (BUS. & P. Sec. 6905)

Issuer's Qualifications

Not stipulated

  ger of any person who has been refused a license under this chapter or whose license has been revoked
  - g. Falsified or omitted any of the information submitted in support "of an application under this chapter"
  - h. "Impersonated, or permitted or aided and abetted another to impersonate, a law enforcement officer, or employee of the United States, a state, or any political subdivision thereof"
  - i. Used a badge, uniform, or insignia or made any statement in connection with his employment "with the intent to give the impression. . .or used with the intent to deceive the public" that he was a law enforcement officer of the United States, a state or any political subdivision thereof.
  - j. "A bad moral character, intemperate habits, or a bad reputation for truth, honesty and integrity."
  - k. Been adjudicated as bankrupt within the last 2 years.
  - l. Been an officer, director, partner or manager of any person who has been refused a license as a private detective, private patrol operator, insurance adjustor or repossessor
  - m. Been refused a license or registration, or had a license or registration revoked as a private detective, et al.

8. High School graduate (4 year or equivalent)
9. Successfully pass exam – questions and answers must be in English
10. "Nothing contained in this section shall preclude the applicant from showing rehabilitation."

(BUS. & P. 6886, 6886.1, 6887, 6889, 6894.7, 6906.)

License	Issuer
3. Accountants	State Board of Accountancy (BUS. & P. Sec. 5050)

Requirements

1. U.S. citizen or have declared intention to become same
2. "of good moral character"
3. Successfully complete "four-year day high

Issuer's Qualifications

1. 8 members appointed by governor
   - a. 5=CPA
   - b. 2=P.A.

school course," or equivalent in "evening school" to include 3 years of English and 2 years math or equivalent thereof as determined by Dept. of Education written exam.

4. One of the following:
   - a. bachelor's degree from approved university, college or other 4 year institution of learning with major in accounting or related subjects requiring minimum of 45 semester hours in such subjects. If bachelor's degree in nonaccounting major must be the equivalent of an accounting major including courses in related business administration

OR

   - b. 2 years of college or associate of arts degree from junior college and has studied "accounting, commercial law, economics, finance and related business administration subjects for a period of at least 4 years."

OR

   - c. Equivalent of (a) or (b) or pass Department of Education exam to prove equivalency

OR

   - d. be registered public accountant

5. Over 21
6. Successfully pass exam in "theory of accounts, in accounting practice, in auditing, in commercial law as affecting accountancy & other related subjects as the certified public accountant members of the board may deem advisable", may be waived for reciprocity
7. One of the following:
   - a. 3 years public accounting experience, 2 years of which in employ of California P.A. or a CPA or partnership majority of which are California P.A.'s or CPA's

OR

   - b. 3½ years public accounting experience, 1 year of which as above

OR

   - c. 4 years public accounting experience, none of which as above

OR

   - d. Experience in private or governmental accounting or auditing equivalent to a, b, or c above as determined by board. "An applicant who qualified for the examination pursuant to subdivision [4 (b) or (c) above]

     shall have at least four years of experience of a type described in [7a, b or c or d above]."

(BUS. & P. Sec. 5070, 5081, 5081.1, 5082, 5083, 5087)

   - c. 1=public member not "a licentiate of the board or registered by the board"

2. All but public member actively engaged in practice of public accountancy not less than 5 years preceding date of appointment.
3. U.S. citizen
4. Resident of state at least 5 years, immediately preceding appointment
5. "of good character"

License

4. Funeral Director

Requirements

1. Complete form provided by board
2. At least 21
3. "of good character" – 2 affidavits of same from county in which resides or intends to practice
4. Furnished proof that business establishment "is or will be constructed, equipped and maintained in all respects as a funeral establishment as defined" by law
5. Exam on:
   a. Signs of death
   b. Manner by which death may be determined
   c. Laws governing preparation, burial & disposal of "dead human bodies," and shipment of "bodies dying from infection or contagious diseases."
   d. Local health and sanitary ordinances and regulations relating to funeral directing and embalming
6. Character investigation

(BUS. & P. Sec. 7618, 7619, 8619, 7620, 7621, 7622, 7625)

Issuer

1. Six members (1 public) appointed by governor (BUS. & P. Sec. 7601, 7602
2. Public member not a licentiate of the board
3. Five others
   a. licensed as funeral directors or embalmers
   b. 5 consecutive years experience in funeral directing or embalming immediately preceding appointment
4. All: not be "financially interested, directly or indirectly," in any institution engaged in funeral directing or embalming instruction and not faculty members of such an institution

Issuer's Qualifications

Funeral Directors and Embalmers (BUS. & P. Sec. 7616)

License

5. Land Surveyors

Requirements

1. Complete form prescribed by board
2. U.S. citizen
3. At least 25
4. "thoroughly familiar with the procedure and rules governing the survey of public lands as set forth in 'Manual of Surveying Instruction,' published by the Bureau of Land Management, Department of the Interior, Washington, D.C."
5. At least 6 years actual experience in land surveying, including both field and office training
   a. "The board may regulate the manner of obtaining the field and office training."
   b. Graduation from approved 4 year course in civil or mining engineering = 3 years actual experience

Issuer

State Board of Registration for Civil and Professional Engineers (BUS. & P. Sec. 8719)

Issuer's Qualifications

1. Nine members appointed by governor
2. U.S. Citizen
3. Seven registered as professional engineers in state; one registered as land surveyor in state; one a public member neither a professional engineer nor land surveyor
4. All but public member at least 12 years active experience and 11 "of good standing in his profession."

- c. Credits earned toward graduation from approved school – "the equivalent of their proportionate part of three years of practice."
- d. Credits earned in approved technical institute in land surveying curriculum – equivalent of their proportionate part of 1½ years of practice

6. At least 5 references as to applicant's "integrity, ability and fitness to receive a license" from land surveyors or civil engineers
7. "The applicant shall state in his application that, should he be licensed, he will support the Constitution of this state and the United States, and that he will faithfully discharge the duties of a licensed land surveyor."
8. Exam
   - a. Scope and method of procedure to be prescribed by board
   - b. One section on appropriate mathematical and basic engineering subjects – professional engineers and engineer-in-training examiners don't need to take
   - c. One section "shall test the applicant's ability to apply his knowledge and experience and to assume responsible charge in professional practice of land surveying."

(BUS. & P. Sec. 8740, 8740.5, 8741, 8742, 8743, 8744, 8745, 8745.5)

5. All: at least 30
6. All state residents at least 5 years immediately preceding appointment (BUS. & P. Sec. 6710, 6711)

License

6. Professional Engineers (BUS. & P. Sec. 6750, 6751, 6752, 6753, 6754, 6755)

Issuer

State Board of Registration for Civil and Professional Engineers. See No. 5 above

Requirements

1. Complete board's form; must specify branch of engineering in which desires registration; all accompanying statements made under oath
2. Of good moral character
3. At least 25
4. 6 or more years engineering experience
   - a. up to 1 year credit for satisfactory postgraduate work in approved school of engineering
   - b. "satisfactory" engineering teaching = experience
   - c. graduation from approved engineering school = 4 years' experience

  - d. each year of study without graduation = ½ year experience, but not more than 4 years total
  - e. at discretion of board non-approved study = up to 2 years' experience

5. Exam: scope and methods prescribed by board
  - a. one division on "appropriate fundamental engineering subjects" to include math and basic sciences
  - b. Another division on ability to apply knowledge and experience and "to assume responsible charge in the professional practice of the branch of engineering in which he is being examined."

(BUS. & P. Sec. 6750, 6751, 6752, 6753, 6754, 6755)

License

7. Social Workers

Requirements

1. U.S. citizen or declared intention to become same
2. "The application shall contain information showing that the applicant has all the qualifications required by the board for admission to the examination."
3. Exam covering
    - a. State and federal laws pertaining to social welfare
    - b. Historical and technical literature in field of social welfare
    - c. Basic information in related science pertaining to social welfare
    - d. Current events and developments affecting "social well-being."
4. Not
    - a. Have committed "an offense involving moral turpitude."
    - b. Use "intoxicating liquor or narcotic or hypnotic drugs to such an extent that in his activities as a social worker he is likely to endanger the health, welfare, or safety of the public."
    - c. Have been declared insane or incompetent
    - d. Advocate "the overthrow of the government

Issuer

Social Worker and Marriage Counselor Qualification Board. (BUS. & P. Sec. 9020)

Issuer's Qualifications

1. Nine members appointed by governor with advice and consent of senate.
2. 2 = state-certified social workers
   2 = state-registered social workers
   2 = state-licensed marriage, family and child counselors
   3 = public members
3. All but public members must have master's degree from accredited college and 5 years experience in his profession. (BUS. & P. Sec. 9001, 9002)

by force and violence or other unlawful means".

e. Have "committed a dishonest or fraudulent act as a social worker resulting in substantial injury to another."

(BUS. & P. Sec. 9022, 9025)

License	Issuer
8.Clinical Social Worker	Social Worker & Marriage Counselor Qualification Board

Requirements

1. At least 21
2. "of a good moral character"
3. U.S. citizen or declared intention to become same
4. Master's degree from an "approved school of social work."
5. Two years full time experience "acceptable to the board in the use of psychosocial and psychotherapeutic methods and measures in a hospital, clinic or agency. One year of such experience shall have been in a hospital, clinic or agency in which the applicant, under professional supervision, has employed such methods and measures."
6. Not
   a. Have committed "an offense involving moral turpitude"
   b. Use "intoxicating liquor or narcotic or hypnotic drugs to such an extent that in his activities as a social worker he is likely to endanger the health, welfare, or safety of the public."
   c. Have been declared insane or incompetent
   d. Advocate "the overthrow of the government by force and violence or other unlawful means."
   e. Have "committed a dishonest or fraudulent act as a social worker resulting in substantial injury to another."

(BUS. & P. Sec. 9042, 9028)

License	Issuer
9.Real Estate Broker	Real Estate Commissioner (BUS. & P Sec. 10150)

Requirements	Issuer's Qualifications
1. Recommendations of 2 real estate owners of each county in which applicant has resided or had place of business for past year certifying applicant is "honest, truthful and of good reputation, and recommending that a real estate broker's license be granted." 2. U.S. citizen 3. a. real estate salesman's license for at least 2 years and qualified for renewal of same within 5 year period immediately preceding application b. actively engaged in business of real estate salesman during that period. 4. But, at Real Estate Commission's approval the equivalent of 2 years general real estate experience or graduation from 4 year college course, which included specialization in real estate, may substitute for No. 3a and b. 5. Exam (may be waived by commissioner for a renewal license) a. "Appropriate knowledge of the English language, including reading, writing and spelling and of arthmetical computations common to real estate and business opportunity practices." b. Understanding of principles of real estate and business opportunity conveyancing, general purposes and "general legal effect" of deeds, mortgages, land contracts of sale and leases, agency contracts, deposit receipts, deeds of trust, chattel mortgages, bills of sale, and of elementary principles of business, land, economics and appraisals. c. "general and fair understanding" of obligations between principal and agent, of principles of real estate and business opportunity practice and "canons of business ethics pertaining thereto," and of provisions of applicable state statutes d. "An understanding of the legal aspects of real estate." An understanding of real estate financing and appraisal. An understanding of real estate practice [d, c and e may be satisfied by satisfactory completion of a 3-unit course in each from an "accredited institution of higher learning."] 6. At commissioner's discretion, proof other than No. 1 above, as to "honesty, truthfulness and good reputation" of applicant.	Not Stipulated

(BUS. & P. Sec. 10150, 10150.5, 10150.6, 10153, 10153.3, 10152, 10156)

License	**Issuer**
10. Real Estate Salesman (BUS. & P. Sec. 10156, 10152)	Real Estate Commissioner (BUS. & P. Sec. 10152)

Requirements

1. Proof of character as required by commissioner. Recommendation of a broker who is to be his employer, certifying applicant is "honest, truthful and of good reputation."
2. Exam
   Same as 5a, b and c above for real estate broker

(BUS. & P. Sec. 10156, 10152)

License	**Issuer**
11. Mineral, oil and gas broker	Real Estate Commissioner (BUS. & P. Sec. 10515)

Requirements

1. Recommendation from 2 real estate owners in each county applicant has lived or conducted business in the past year, certifying applicant is honest, truthful and of good reputation, and recommending license be granted.
2. U.S. citizen
3. At commissioner's discretion, additional proof of character
4. Exam
   a. appropriate knowledge of English language and of elementary arithmetic
   b. "fair understanding" of general purposes and general legal effect of deeds, mortgages, chattel mortgages, contracts of sale, bills of sale, liens and lease, of elementary principles of business economics, appraisals and purchase, sale renting and leasing of personal property
   c. "general and fair understanding" of obligation between principal and agent, of rudiments of geology relating to minerals, oils and gas and a familiarity with methods of mineral and oil exploration and produc-

tion and provisions of state statutes relative to mineral, oil and gas brokerage.

(BUS. & P. Sec. 10515, 10515.5, 10517, 10518)

License

12. Pawn Brokers (FIN. Sec. 21200-09)

Requirements

None

(FIN. Sec. 21200-09)

Issuer

None

License

13. Bail License (INS. Sec. 1805)

Requirements

1. "of good business reputation and of good general reputation."
2. Never refused a license or had one revoked "by any public authority for reasons which indicated lack of honesty or integrity or show improper business practice".
3. "an understanding of the obligations and duties of bail."
4. Has not participated in or been connected with any business transaction which, in commissioner's opinion, "tends to show unfitness to act in a fiduciary capacity or to maintain the standards of fairness and honesty required of a trustee or other fiduciary."
5. No "outstanding judgment. . .of conviction of a misdeameanor or felony denounced by the code, or one of the elements of which involves a misappropriation of money or property."
6. Committed no act "forbidden by this code."
7. Is "a fit and proper person to hold the license applied for."
8. A "continuous resident" of State for at least 2 years.

(INS. Sec. 1805)

Issuer

Insurance Commissioner (INS. Sec. 1800)

Issuer's Qualifications

1. Appointment by governor with consent of senate
2. "competent and fully qualified to perform the duties of the office."
3. Not an officer, agent or employee of an insurer or directly or indirectly interested in any insurer or licensee of insurance except (a) as policyholder or (b) by virtue of relationship by blood or marriage to any person interested in any insurer or licensee (INS. Sec. 12900, 12901)

Appendix II

License	Issuer
14. Insurance License (Common Qualifications) (INS. Sec 1668, 1675, 1677)	Commissioner of Insurance (INS. Sec. 1800, 1802)

Requirements

1. "Properly qualified to perform the duties of a person holding the license applied for."
2. "of good business reputation".
3. Not "lacking in integrity".
4. Must intend to carry on the insurance business "with the general public".
5. Not have "been refused a professional, occupational or vocational license or had such a license suspended or revoked by any licensing authority for reasons that should preclude the granting of the license applied for."
6. Not "previously engaged in a fraudulent practice or act or. . . conducted any business in a dishonest manner."
7. Not have "shown incompetency or untrustworthiness in the conduct of any business, or. . .by commission of a wrongful act or practice in the course of any business exposed to the public or those dealing with him to the danger of loss".
8. Not "convicted of a felony; a misdeameanor denounced by this code or other laws regulating insurance, or a public offense having as one of its necessary elements a fraudulent act or an act of dishonesty in acceptance, custody or payment of money or property."
9. Other provisions along the same lines.
10. A written examination "of sufficient scope to satisfy the commissioner that the applicant has sufficient knowledge of and is reasonably familiar with the insurance laws of this State and the provisions, terms and conditions of insurance which may be transacted pursuant to the license sought, and has a general and fair understanding of the obligations and duties of the holder of such license." [May be waived for renewal applicants for certain types of licenses or for application for a travel insurance license.]

(INS. Sec. 1668, 1675, 1677)

License

15. Surplus line Broker

Requirements

1. Proof that trustworthy and competent to transact an insurance brokerage business in such manner as to safeguard the interest of the insured".
2. Proof of competency by holding a broker's license (regular or surplus line) or passing exam (see provision No. 10, No. 16 above). (INS. Sec. 1765, 1765.3)

Issuer

Insurance Commissioner (INS. Sec. 1765)

B. COLORADO STATUTES

License

1. Real estate title abstracter to make, compile or sell abstracts

Requirements

1. Must pass "satisfactory examinations" on abstract books & "system of indexes or other records"
2. Personal exam as to knowledge, skill & ability as an abstracter
3. If application by a "firm, partnership, association, or corporation" only the active manager or one of the active managers must take exams. (COLO. REV. STAT. Sec. 1-1-7 (1963), hereinafter referred to by section number.)

Issuer

Abstracter's Board of Examiners (Sec. 1-1-1)

Issuer's Qualifications

1. In abstract business in Colorado at least 5 years immediately preceding appointment
2. 3 members; no 2 from same county; directors, officers or employees of same licensee or any abstract business or same licensee
3. Appointed by governor (Sec. 1-1-2)

License

2. Certified Public Accountant

Requirements

1. U.S. citizen or declared intention to become same
2. Resident of state or regularly employed in state
3. 21 years old
4. Good moral character
5. Exam
   a. theory of accounts

Issuer

Board of Accountants (Sec. 2-1-3)

Issuer's Qualifications

1. 3 members appointed by governor
2. U.S. citizen
3. Resident of state
4. Colo. CPA in active practice (Sec. 2-1-2)

  - b. accounting practice
  - c. auditing
  - d. "law involved in public accounting"
  - e. other related subjects

6. Board authorized to use standard exams put out by American Institute of CPA's
7. Graduate of college or university approved by board with 30 or more semester hours or equivalent of subject matter on state exam. However, not more than 6 of those hours shall be on the law of public accounting.
8. Either
   - A. for 12 months preceding date of application either
     1. Colo. registered accountant in practice or doing accounting work as a CPA or as
     2. an employee of a CPA of another state or for a Colo. registered accountant or
     3. Income tax field agent with IRS or comprehensive accountant or auditor for state of Colo. or GAO
     4. Any combination of 1, 2, and 3

OR

   - B. An additional 30 semester hours or equivalent & a grad degree from approved college or university in accounting, business law, economics or finance. At least 20 of the semester hours must be in subjects examined by the board.

(Sec. 2-1-5, 2-1-8, 2-1-6, 2-1-7)

License

3. Architects

Requirements

1. U.S. citizen
2. 21 years old
3. Good moral character
4. Degree in architecture or architectural engineering from approved school, with 3 or 4 years practical experience, respectively
   - a. no more than 2 years practical experience as full-time faculty
   - b. in lieu of degree, 10 years experience
   - c. if some college work but no degree or degree but less than 5 years program, each year of study satisfactorily completed = one year experience
5. Exam
   - a. not less than 36 hours in 4 consecutive days

Issuer

State board of examiners of architects (Sec. 10-1-3)

Issuer's Qualifications

1. 5 members
2. U.S. citizen
3. 4 members:
   - a. licensed architects in Colo.
   - b. Colo. resident
   - c. practice in Colo. at least 5 years prior to appointment
4. 1 member need not meet 3a or 3c

(Sec. 10-1-3)

b. building construction & building documents
c. structural design
d. professional architectural administration
e. building equipment
f. history & theory of architecture
g. site planning
h. architectural design OR reciprocity.

OR

reciprocity.
(Sec. 10-18, 10-1-9)

License

4.Collection agencies

Requirements

1.". . .trustworthy, bear a good reputation for honest and fair dealing, who are financially responsible, and competent to engage in the collection of accounts, claims and notes for others."
2.Engaged in collection business, either as owner, partner, officer, or employee of "some established reputable collection agency" for at least 2 years – May be waived by board if "sufficient business experience."
3.No conviction for fraud, embezzlement or any crime involving moral turpitude
4.No record of having defaulted in payment of money collected for others
5.Colo. resident [if partnership, at least one partner; if corporation, incorporated under Colo. laws; if foreign corporation, compliance with Colo. laws]
6.Sufficient record keeping procedure to show all monies collected & remittance thereof.
(Sec. 27-1-5)

Issuer

State Collection Agency Board (Sec. 27-1-3)

Issuer's Qualifications

1. 3 appointed by governor
2. Colo. resident at least 10 years immediately before appointment
3. In coll. business in Colo. not less than 5 years immediately before appointment as "owner, partner or officer" of a corporation (Sec. 27-1-3)

License

5.Engineer

Requirements

1."of good character and reputation."
2.At least five references, each of whom has personal knowledge of applicant's good character and reputation.
3.At least 25 years of age.
4.Four years of engineering "experience of a grade and character which indicates that the

Issuer

State board of registration for professional engineers (Sec. 51-1-5)

Issuer's Qualifications

1. Seven professional engineers appointed by governor.
2. U.S. and Colo. citizen
3. Practice of engineering at least 12 years, at least 8 years in

applicant is qualified to offer engineering services to others."

5.a. Graduate of an "engineering curriculum" of at least 8 semesters or equivalent formal study at a college or university.

OR

b. Eight or more years "of progressive engineering experience of a character and grade which indicates that the applicant may be professionally competent. . ."

OR

c. Fifteen years of engineering experience "of which at least eight have been in responsible charge of engineering work of a grade and character which indicates that the applicant may be competent . . ."

6. Exam
   a. 8 hours in " 'fundamentals of engineering' " (waived if 5c above; may be waived if duly licensed engineer-in-training).
   b. 8 hours in " principles and practice of engineering' "

(Sec. 51-1-11, 51-1-12)

"responsible charge"

4. Registered as "professional engineer" under this act at least 10 years.
5. No more than 2 engaged in same type of engineering service or practice.
6. At least 2 must be licensed land surveyors "in responsible charge of land survey work at least 5 years."

(Sec. 51-1-5, 51-1-7, 51-1-9)

License

6. Insurance Agents

Requirements

1. Written notice by insurance company that applicant is "of good moral character, has not been convicted in this or any other jurisdiction of a felony or a crime involving moral turpitude," that statement required in 2 below is truthful and accurate, and that applicant "otherwise is a suitable and competent person and intends to hold himself or herself out in good faith as an insurance agent. . ."
2. Statement from applicant giving background, business experience for last five years, knowledge of insurance business, and "such other information, if any, as the commissioner may require upon a blank furnished by him."
3. Examination "to determine that the appointee has had experience or training, or is otherwise qualified by education in the kind or kinds of insurance transacted by the company for which he desires to be licensed and be tested in the category or categories for which application is made, whether he is reasonably familiar with and possesses basic knowledge of the insurance laws of this state, and whether he is reasonably

Issuer

Insurance Commissioner (Sec. 72-1-18)

Issuer's Qualifications

1. Appointed by governor
2. "well versed in insurance"
3. "an elector of the state of Colorado"
4. No pecuniary interest in any insurance company or agency directly or indirectly other than as a policy holder

(Sec. 72-1-4)

familiar with the provisions, terms and conditions of the policies or contracts he is proposing to solicit, negotiate or effect."
– May be waived by Commissioner for specified reasons.
(Sec. 72-1-18)

License	Issuer
7. Insurance broker	Insurance Commissioner (Sec. 72-1-20)

Requirements

1. A "suitable and competent person."
2. State resident (exceptions).
3. Examination at discretion of insurance commissioner to determine fitness to act as broker.
(Sec. 72-1-20, 72-1-21)

License	Issuer
8. Employees of insurance agents to solicit or negotiate insurance	Insurance Commissioner (Sec. 72-1-23)

Requirements

1. Application by applicant on state form with accompanying statement giving insurance experience; submitted by agent.
2. Regular full-time employee, under "personal direction and responsibility" of agent
3. Exam "on the qualification. . .to act for the agent"
(Sec. 72-1-23)

License	Issuer
9. Surplus line insurance broker	Insurance Commissioner (Sec. 72-13-5)

Requirements

1. Colorado resident
2. Colo. licensed agent or broker
3. "competent and trustworthy"
(Sec. 72-13-5)

Appendix II

License

10. Bail bondsman

Requirements

1. Complete financial statement
2. Not convicted of felony or crime involving moral turpitude in past 10 years
3. Statement that "will actively engage in the bail bond business"
4. References showing good moral character
5. No employee, partner or associate who could not qualify for same
(Sec. 72-20-3)

Issuer

Insurance Commissioner (Sec. 72-20-2)

License

11. Soliciting agent or runner for bail bondsman

Requirements

1. 1, 2, 4 & 5 of No. 10
2. Statement that will be employed by only one "professional bondsman" & that latter will supervise his work & be responsible for his conduct in his work
3. Application signed by bondsman
(Sec. 72-20-3)

Issuer

Insurance Commissioner (Sec. 72-20-2)

License

12. Real estate broker

Requirements

1. Maintain place of business in state [non resident okay if licensed broker in reciprocal state & irrevocable consent to suit in Colo.]
2. Such proof of trustfulness & honesty as commissioner may require
3. At least 21 and U.S. citizen
4. Colo. real estate salesman for 2 years OR at discretion of commissioner, college degree with "sufficient experience and training to satisfy the purposes of this article."
5. Exam to determine competency
    a. prepared by or under supervision of commission
    b. shall include: "ethics, reading, writing,

Issuer

Real estate commission (Sec. 117-1-5)

Issuer's Qualifications

1. 3 appointed by governor
2. Real estate brokers with not less than 10 years experience in state.
(Sec. 117-1-3)

spelling, arithmetic, principles of land economics, appraisal, financing, a knowledge of the statutes and law of this state relating to deeds, trust deeds, mortgages, listing contracts, contracts of sale, bills of sale, leases, agency, brokerage, the provisions of this article, and the rules of the commission."

c. "more exacting" exam calling for "higher degree of proficiency" than exam for salesmen.

d. includes preparation of a real estate closing statement.

(Sec. 117-1-5)

License	**Issuer**
13. Real estate salesman	Real estate commission (Sec. 117-1-5)
Requirements	
1. 1 & 2 as for real estate broker 2. At least 18 3. Recommendation from licensed broker certifying "of good repute" & that broker will actively supervise & train 4. Exam: same as 5a & b above (Sec. 117-1-5)	

License	**Issuer**
14. Securities broker – dealers, issuer – dealers, salesmen	Securities commissioner (Sec. 125-1-2)
Requirements	**Issuer's Qualifications**
1. Consent to service of process 2. Statement of qualification & business history 3. Statement of "any injunction or administrative order or conviction of a misdemeanor involving a security or any aspect of the securities business and any conviction of a felony" 4. Statement of financial condition & history (Sec. 125-1-3)	Appointed by the Attorney General (Sec. 3-9-2)

License	**Issuer**
15. Pawnbrokers	City or town mayor (Sec. 139-58-2)
Requirements	
"satisfactory evidence of. . .good character" (Sec. 139-58-1)	

License

16.Physicians & surgeons

Requirements

1. Exam given and graded by board

OR

2. Exam by national board of medical examiners or national board of examiners for osteopathic physicians & surgeons

OR

3. Reciprocity for DC, states & territories if
   - a. standards not substantially lower than Colorado's at same time
   - b. that state has reciprocity
   - c. medical school approved by Colo. board at time of issurance
4. 21 years old, U.S. citizen, "of good moral character"
5. Graduate of approved medical college, one year internship
6. A valid, unrevoked certificate issued by the state board of examiners in the basic science of Colorado
7. Has commited no acts constituting unprofessional conduct

(Sec. 91-1-7)

Issuer

Board of medical examiners (Sec. 91-1-7)

Issuer's Qualifications

1. 9 appointed by governor
2. At least 7 = M.D. & 2=O.D. (doctor of osteopathy)
3. Licensed & practice in Colo. at least 3 years immediately prior to appointment
4. State resident at least 5 years immediately prior to appointment
5. Recommendations can be submitted by Colo. state medical society or osteopathic association, as appropriate

(Sec. 91-1-3)

C. FLORIDA STATUTES

License

1.Tax Collection Agency[1]

Requirements

Not stipulated, other than to say may be denied "for cause" or revoked by the judge for violations of laws on Tax Collection Agencies, Ch. 197. (FLA. STAT. ANN. Sec. 197.03, hereinafter referred to by section number.)

Issuer

County judge (Sec. 197.03)

License

2.Pawnbroker

Requirements

Requirement for records keeping
(Sec. 205.434)

Issuer

Not stipulated; license tax paid in county (Sec. 205.434)

License

3. Funeral Director

Requirements

1. "bona fide resident of the state"
2. Over 21
3. Completed "a full prescribed course in a standard high school or a course of education equivalent thereto"
4. "good moral character"
5. "not have been convicted or have pleaded or been found guilty in this or any other state of a crime involving moral turpitude."
6. 3 years practical training and instruction in an approved apprentice training agency under a regularly licensed and practicing embalmer. 2 years apprentice training may be waived if applicant "has graduated from and received a degree in the profession of funeral directing and embalming from [an accredited] college or university. . .or a junior college accredited by the state department of education offering such a degree."
7. "have embalmed at least fifty (50) dead human bodies"
8. Attended regular 9 month course of instruction in an approved "reputable college of embalming" in which stipulated courses covered
9. Character recommendations by "two (2) funeral directors duly licensed under the terms of this chapter and who are familiar with his reputation and character"
10. Been a practicing licensed embalmer of state at least one year
11. Application may be denied if (partial list)
    a. "a habitual drunkard or narcotic addict"
    b. "caused the defamation of a duly licensed funeral director in this state by falsely imputing to him dishonorable conduct, inability to perform contracts, or the handling of inferior merchandise"
    c. "has been found guilty by a jury of, or has pleaded guilty to, after being charged with, a crime in this state or in any other state involving moral turpitude. . ."
12. Examination as to qualifications; not less than 150 written questions on anatomy and embalming and not less than 25 oral questions on those and related subjects
    (Sec. 470.07, 470.08, 470.09, 470.12)

Issuer

State Board of Funeral Directors and Embalmers (Sec. 470.07)

Issuer's Qualifications

1. **7 members appointed by governor with advice and consent of senate.**
2. **1 = state health officer, 6 = "practical and practicing licensed funeral directors and embalmers"**
3. **In actual practice for 5 years immediately preceding appointment**
4. **One member = state resident and represents "the state at large;" other members from stipulated areas of state (Sec. 470.02)**

Appendix II

License

4.Professional Engineers

Requirements

1.More than 24
2."of good character and reputation"
3.Either a graduate of approved 4 year or more course in engineering from approved school and 4 or more years active engineering practice "of a character indicating the applicant is competent to be placed in responsible charge of such work"; or 10 or more years of active practice of same character
4.Exams "of such a character as to test the qualifications of the applicant to practice professional engineering, and shall include such subjects as will tend to ascertain the knowledge of the applicant of the theory and practice of professional engineering. . ."
(Sec. 471.21, 471.22)

Issuer

State Board of Engineer Examiners (Sec. 471.08)

Issuer's Qualifications

1. 7 members appointed by governor
2. 6 = registered engineers, at least one of which qualified to practice electrical or electronic engineering; one mechanical engineering; two civil engineering; one, also a registered land surveyor
3. Other member not a registered engineer, but a registered land surveyor, actively engaged in "practice of land surveying as his principal occupation, for at least twelve (12) years in the state"
4. At all times, must be at least 3 members in private practice, one in government employ and one in industry
5. 6 engineers: each must have 12 years active experience in engineering work which includes "responsible charge of engineering teaching" at recognized technical institute
6. 6 engineers: "of recognized good standing in his profession;" member of a recognized engineering society; at least 35; resident and citizen of and practicing engineer in state at least 5 years prior to appointment
(Sec. 471.08)

License

5.Certified Public Accountants

Requirements

1.U.S. citizen
2.State resident for at least 2 years immediately preceding application [declared unconstitutional Mercek v. Hemmings, 194 S2d 579

Issuer

State Board of Accountancy (Sec. 473.04)

Issuer Qualifications

1. 5 persons appointed by governor
2. State residents

(1966)]
3. "legally domiciled in the state"
4. Over 21
5. "of good moral character"
6. Graduate of 4 year high school or equivalent
7. a. graduate of at least a 4 year accredited college or university with major in accounting, or
   b. at least 3 years' experience in practice of public accounting, or
   c. kept "books of account concurrently for more than one individual or business. . .as his sole vocation for a continuous period of at least five years" immediately preceding application
8. One year of work in a registered accountant's office or "successfully completed an additional accredited one year accounting course at an accredited college or university"
9. Exam in "theory of accounts, practical accountancy, auditing, commercial law as affecting accountancy, and such other related subjects as shall be specified by the board" (Sec. 473.08, 473.10)

3. State CPA's (Sec. 473.03)

License

6. Real Estate Salesmen

Requirements

1. 21
2. U.S. citizen
3. "honest, truthful, trustworthy, of good character, and. . .bears a good reputation for fair dealing"
4. "competent and qualified to make real estate transactions and conduct negotiations therefor, with safety to investors and to those with whom he may undertake a relationship of trust and confidence."
5. "bona fide resident of the state" for at least 6 months prior to application unless "he has lawfully operated exclusively as a real estate broker or salesman in another state, requiring registration of real estate brokers or salesmen, for at least two years prior to filing his application in Florida."
6. Exam of qualifications [statute allows commission to delay this requirement "until such time as it may be practicable to put it in force."] (Sec. 475.17, 475.19)

Issuer

Real Estate Commission (Sec. 475.04)

Issuer Qualifications

1. 3 persons appointed by governor
2. "resident citizens of the state"
3. Real estate broker at least 10 years prior to appointment (Sec. 475.02)

Appendix II

License

7. Real Estate Broker

Issuer

Real Estate Commission (Sec. 475.04)

Requirements

1. No. 1, 2, 3 and 4 as above for real estate salesmen
2. State resident at least one year immediately prior to application
3. "served an apprenticeship as a registered real estate salesman, with and under the instructions and guidance of a registered real estate broker of the state, for at least twelve consecutive months next prior" the application date
   a. applicant must submit affidavit that he has done so
   b. broker must submit affidavit that applicant "completed his apprenticeship, that he is qualified, and has the ability to be a real estate broker.
4. Exam
5. Must take educational courses if regularly established and conducted by commission, and if required by commission
   (Sec. 475.17, 475.19)

License

8. Securities dealers and salesmen

Issuer

Securities Commission (Sec. 517.12)

Requirements

1. "good repute," "good character"
2. "established financial responsibility"
3. Oral or written exam, if established by commission
4. Such information as "necessary to establish the good repute in business of the applicant," at discretion of commission
5. Irrevocable written consent to service of process
   (Sec. 517.12)

Issuer's Qualifications

Comptroller, treasurer and attorney general of state (Sec. 517.03)

License

9. General lines insurance agent

Issuer

Insurance Commissioner (Sec. 626.112)

Requirements

1. Trustworthy and competent
2. "a natural person of at least twenty-one years

Issuer's Qualifications

State treasurer (Sec. 624.0100)

of age"[2]
3. U.S. citizen
4. Bona fide state resident "for at least one year last past"
5. Will actually reside in state at least 6 months of each year
6. Place of business located in state and "will actively engage in the business of insurance, and will maintain a place of business accessible to the public"
7. Either of various stipulated combinations of education and experience in insurance matters – to include an affidavit from employer "setting forth the period of such employment, that the same was substantially full-time, and giving a brief abstract of the nature of the duties performed by the applicant."
   (Sec. 626.0105, 626.0106)

License

10. Life Insurance Agent

Issuer

Insurance Commissioner (Sec. 626.112)

Requirements

1. Trustworthy and competent
2. At least 18
3. U.S. or Canadian citizen
4. State resident
5. Not an employee of the "United States veterans administration or state service office. . .or be on active duty in the armed forces of the United States. . ."
6. Not a funeral director or undertaker or employee or representative thereof or have an office in or in connection with a funeral establishment
7. Pass exam "to commissioner's satisfaction" – many listed exceptions
   (Sec. 626.0209, 626.221)

License

11. Insurance Solicitor

Issuer

Insurance Commissioner (Sec. 626.112)

Requirements

1. Trustworthy and competent
2. "a natural person"
3. U.S. citizen
4. Bona fide state resident "for more than six months last past"

5. Within 12 months immediately preceding application either:
   a. completed an approved insurance course
   b. at least 6 months experience "in responsible insurance duties as the substantially full-time employee of an agent, or of an insurer, their managers, general agents, or representatives"
6. Will be employed by only one agent who will supervise his work "and his conduct in the insurance business"
7. "will spend all of his business time in the employment of the agent, and will be domiciled in the office of the appointing agent. . ."
8. Appointing agent must endorse the application and oblige "himself thereby to supervise the solicitor's conduct and business." (Sec. 626.0108)

License	Issuer
12. Insurance Adjuster	Insurance Commissioner (Sec. 626.112)

Requirements

1. Commissioner may require "that the application be supplemented by the certificate or affidavit of such person or persons as he deems necessary for his determination of the applicant's residence, business reputation and reputation for trustworthiness"
2. At least 21
3. U.S. citizen
4. Public adjuster
   a. state resident at least one year immediately prior to application
   b. sufficient experience, training, instruction and knowledge "as to enable and qualify him to engage in the business of insurance adjuster fairly and without injury to the public or any member thereof with whom he may have business as a public adjuster."
5. Independent adjuster
   a. state resident at least one year immediately preceding application – at commissioner's discretion may be waived if applicant employee of licensed adjuster in state or of an adjusting firm or corporation supervised by a currently licensed adjuster
   b. "trustworthy and has such business reputation as to reasonably assure that he will conduct his business as insurance adjuster fairly and in good faith and without detri-

ment to the public."
  - c. same as 4b above
  - d. exam
- 6. Company employee adjuster
  - a. bona fide state resident
  - b. same as 5b above
  - c. same as 4b above
  - d. exam

  (Sec. 626.0414, 626.0415, 626.0416, 626.221)

License	**Issuer**
13. Surplus Line Agent	Insurance Commissioner (Sec. 626.112)

Requirements

1. Licensed as general lines agent
2. Deemed by commissioner to have "sufficient experience in the insurance business to be competent for the purpose. . ."
3. Exam

   (Sec. 626.0515, 626.0524)

FOOTNOTES

[1] Tax Collection Agency: "any person who shall collect, pay or offer to collect or pay the taxes or special assessments of another, levied by the sate or any of its subdivisions or municipalities, for or in expectation of a commission compensation or valuable consideration; provided, however, this definition shall not include any person regularly employed by the taxpayers for that and other purposes or an attorney at law in the exercise of his duties as such or any official or person employed by the state or any of its subdivisions or municipalities for the purpose of enforcing the tax law." Sec. 197.01

[2] A natural person who has attained the age of 18 years and whose disabilities of non-age have been removed by the circuit court, is eligible, provided all other requirements of the insurance laws are complied with to be licensed as a general lines insurance agent. 1960 Op. Atty. Gen. 060-122, July 27, 1960.

D. GEORGIA STATUTES

License	**Issuer**
1. Surplus line broker	Insurance Commissioner (Sec. 56-618)

Requirements

1. Licensed as a resident agent or broker as to property, casulty and surety insurance.
2. "deemed by the Commissioner to be competent and trustworthy."

Issuer's Qualifications

State Comptroller General (Sec. 56-201)

3. Application on appropriate form.
   (GA. CODE ANN. Sec. 56-618, hereinafter referred to by section.)

License	**Issuer**
2. Life, accident and sickness insurance agent and counselor	State Insurance Commissioner (Sec. 56-803a)

Requirements

1. Application, including
   a. Previous licenses in any state
   b. Insurance experience
   c. Insurance instruction had or expects to have
   d. Certificate from insurer that trustworthy and qualified to act as its agent
   e. Signed and "verified by the oath of the applicant".
2. Exam to determine competence to act as an agent and familiarity with pertinent provisions of State's insurance laws, unless,
   a. Ticket-selling agent of public carrier for sale of accident insurance policies
   b. At Commissioner's discretion, applicants to be licensed only for credit life, accident and sickness insurance
   c. At Commissioner's discretion, applicants whose license suspended less than one year
   (Sec. 56-804a, 56-805a)

License	**Issuer**
3. Property, casualty, surety and allied lines insurance agent	State Insurance Commissioner (Sec. 56-803b)

Requirements

1. Good character
2. Appointed agent by authorized insurer, subject to issuance of license
3. Education/experience
   a. Approved classroom insurance courses at school, college, or extension division thereof, or schools operated by insurance company or insurance association OR
   b. Approved correspondence course and at least 6 months of "responsible insurance duties as a substantially full-time bona fide employee" of agent, insurer, their manager, general agents or representatives in the kind of insurance wants license for OR

c. One year's experience as in 3b above, but without any education requirement

4. Examination by Commissioner to determine competence to act as agent. Covers only type(s) of insurance for which applicant is to be licensed. Commissioner may direct and/or publish examination textbooks and manuals.
(Sec. 56-8046, 56-806b, 56-808b)

License

4. Broker for same insurance as in No. 3

Issuer

State Insurance Commissioner (Sec. 56-803b)

Requirements

1. 1 and 4 as above No. 3
2. Must have sufficient experience to demonstrate competence.
(Sec. 56-804b, 56-806b, 56-808b)

License

5. Solicitor for same insurance as in No. 3

Issuer

State Ins. Commissioner (Sec. 56-803b)

Requirements

1. 1 and 4 as above No. 3.
2. Must be appointed as solicitor by licensed agent or broker subject to issuance of license
(Sec. 56-804b, 56-806b, 56-808b)

License

6. Counselor for same insurance as No. 3

Issuer

State Insurance Commissioner (Sec. 56-803b)

Requirements

1. 1 and 4 as above No. 4
2. 5 years experience in insurance business, generally as agent, solicitor, broker or adjuster
(Sec. 56-804b, 56-806b, 56-808b)

License

7. Adjusters for same insurance as No. 3

Issuer

State Insurance Commissioner (Sec. 56-803b)

Requirements

1. 1 and 4 as above No.3
(Sec. 56-803b, 56-804b, 56-808b)

Appendix II

License

8. Real Estate Salesman

Requirements

1. Trustworthy and good reputation for honesty
2. Competent to be salesman "in such a manner as to safeguard the interests of the public and only after satisfactory proof thereof" presented to the Board.
   (Sec. 84-1409)

Issuer

Real Estate Commission (Sec. 84-1401)

Issuer's Qualifications

1. Three persons, appointed by Governor with the approval of the Sec. of State & confirmed by the Senate
2. State residents
3. Actively engaged in real estate business for a period of at least 5 years prior to the date of their appointment. (Sec. 84-1404)

License

9. Real Estate Broker

Requirements

1. Same as 1 & 2 above No. 9
2. Had a salesman's license for at least 3 years during which time actively engaged in real estate business. May be waived by completion of approved higher education courses.
3. Exam – can be waived by Real Estate Commission in extraordinary cases.
   (Sec. 84-1409)

Issuer

Real Estate Commission (Sec. 84-1401)

License

10. Securities dealer

Requirements

1. Register on prescribed form, to include:
   a. principal place of business
   b. brief description of general character of business conducted or proposed to be conducted
   c. any other States where registered as dealer or under federal Securities Exchange Act
   d. securities exchanges or organizations of dealers or brokers where member
   e. financial statement
   f. if ever "convicted of or charged with" felony or any misdemeanor with essential element of fraud
2. required except for exempt transactions (Sec. 97-107), e.g., administrator of estate
   (Sec. 97-105)

Issuer

Commission of Securities (Sec. 97-105)

Issuer's Qualifications

Secretary of State (Sec. 97-103)

License

11. Securities Salesman

Requirements

1. name of dealer, limited dealer, or issuer employing or proposing to employ applicant
2. if ever registered anywhere as dealer or salesman
3. written examination either by State Commissioner or some similar examining body. (Sec. 97-105)

Issuer

Commission of Securities (Sec. 97-105)

License

12. Certified Public Accountant

Requirements

1. Have received baccalaureate degree or completed requirements thereof at nationally accredited college or university with an accounting major or the equivalent thereof – may be waived if applicant passes "a special written exam."
2. U.S. citizen and State resident
3. Over 21
4. "of good moral character."
5. Two years continuous practical experience in public accounting "immediately preceding the date of issuance of the certificate."
6. No. 5 may be satisfied, at board's discretion, by either
   a. Two years work in the examination of financial records for the Federal or Georgia government
   b. A master's degree in accounting, or the equivalent thereof, and one years experience as in No. 5.
7. Examination, written or oral, "to demonstrate the knowledge of such applicant of theory of accounts – and practical accounting, auditing, commercial law, or any other related subject the Board may deem it proper to examine. . ."
8. All the above may be waived for reciprocity.

Issuer

State Board of Accountancy (Sec. 84-201)

Issuer's Qualifications

1. Five members appointed by the Governor with the approval of the Secretary of State and confirmation by the Senate.
2. One must be a lawyer practicing in the state at least 4 years.
3. Other 4 must be CPA's practicing in the state at least 4 years. (Sec. 84-201)

License

13. Land Surveyor

Issuer

State Board of Registration for

Appendix II

Requirements

1.a. Either
   (1) Graduate of school or college approved by Board to include approved course in surveying
   (2) Surveying 2 or more years of land surveying work of "a character satisfactory to Board and indicating competence to practice land surveying"
b. OR
   Successfully pass written or written/oral exam in surveying by Board and "a specific record" of 6 or more years experience as above
c. OR
   (1) 1 or more years of actual practice in land surveying work of a character satisfactory to board
   (2) Not less than 30 years old additionally
   (3) At least 25 & of good character & reputation
2. "Of good character and reputation."
3. At least 25
Sec. 2101, 84-2123, 84-2124)

Professional Engineers & Land Surveyors (Sec. 84-2104)

Issuer's Qualifications

1. Four professional engineers & 1 land surveyor appointed by governor from among nominees recommended by the representative engineering societies in the state
2. State resident & U.S. citizen
3. Engaged in the practice of the profession of engineering at least 12 years & "in responsible charge of important engineering work" at least 5 years, to include teaching. (Sec. 84-2104, 84-2106)

License

14. Physician and surgeon

Requirements

1. Graduate of state medical school or "some other legally incorporated medical college or institution in good standing with the board".
2. One year internship in approved hospital
3. Examination, wholly or partially written, "according to the methods deemed by [the board] to be the most practicable and expeditious to test the applicant's qualifications." Exam must cover specified subjects.
(Sec. 84-907, 84-913)

Issuer

State Board of Medical Examiners (Sec. 84-906)

Issuer's Qualifications

10 practicing physicians
1. integrity & ability
2. resident of Georgia
3. licensed to practice in Georgia
4. graduate of "reputable" medical school
5. in practice in Georgia at least 5 years.
6. not connected in any way with any medical college
7. appointed by governor & receives certificate of appointment
8. Each congressional district must be represented
(Sec. 84-902, 84-903)

License	Issuer
15. Professional Engineer	State Board of Registration for Professional Engineers and Surveyors (Sec. 84-2104)

Requirements

1. "Of good character and reputation."
2. At least 25
3. a. Either
    (1) Graduation "in an approved engineering curriculum" from approved school
    (2) Written exam in "fundamental engineering subjects," unless certified as engineer-in-training
    (3) "a specific record" of an additional four or more years of engineering "of a character satisfactory to the board, and indicating that the applicant is competent to practice professional engineering." –
    Graduate work may count for up to one year of experience, at board's descretion.
    (4) Further exam, either oral or written, and/or additional evidence if board in doubt as to competency
  b. OR
    (1) Pass a written, or written and oral exam "to show the knowledge and skill approximately that attained through graduation" from an approved engineering curriculum
    (2) Eight or more years experience as in (3) above.
  c. OR
    (1) At least 35
    (2) Twelve or more years experience as in (3) above.
  (Sec. 84-2101, 84-2122)

E. ILLINOIS STATUTES

License	Issuer
1. Remittance agent	Secretary of State (16 ½ Sec. 95)

Requirements

1. Detailed statement of finances
2. Statement disclosing whether involved in any

civil or criminal litigation and if so, material facts pertaining thereto

3. Affidavits of 2 persons residing in city or town of applicant's residence, stating
   - a. Have known applicant at least 2 years
   - b. Applicant "of good moral character"
   - c. Applicant's "reputation for honesty and business integrity in the community in which he resides is good"

(ILL. ANN. STAT. 16 ½ Sec. 95, hereinafter referred to by chapter and section numbers.)

License

2. Professional Engineer

Requirements

1. "good moral character and temperate habits"
2. "has devoted a total of at least 8 years to study, training and experience in the theory and practice of professional engineering"
   - a. each one fourth of total number of hours needed for engineering degree equals one year experience.
   - b. not more than 3 years of undergraduate engineering study can count if a degree not received
   - c. each year of graduate engineering study equals one year experience, maximum of two years.
3. Exam on "subjects required of candidates for a baccalaureate degree in engineering by the college of Engineering of the University of Illinois"
4. Not less than five references, of whom 3 or more are professional engineers with personal knowledge of applicant's engineering experience.

(48 ½ Sec. 40-43)

Issuer

Engineering Examining Committee of Department of Registration and Education, upon advice of the Engineering Examining Committee (48 ½ Sec. 35)

Issuer's Qualifications

1. Nine professional engineers appointed by Director of Dept. of Registration and Education
2. U.S. citizen
3. State resident
4. Not less than 12 years experience as professional engineer
5. Been in charge of professional engineering work at least 5 years, to include assistant professor or higher in engineering college.

(48 ½ Sec. 37)

License

3. Bail Bondsman

Requirements

1. Not convicted of any felony under U.S. or any state laws
2. A "certificate of good reputation. . .signed by a judge of the circuit court, where the applicant resides or is domiciled"

Issuer

Director of Insurance (16 Sec. 53)

Issuer's Qualifications

Not stipulated

3. License may be denied at director's discretion if applicant:
   a. convicted of "any criminal offense" under U.S. or any state laws
   b. adjudged bankrupt or insolvent at time of application
   c. "For any interference or attempted interference with the administration of justice
   d. guilty of any "fraudulent or dishonest practices"

   (16 Sec. 53)

License	**Issuer**
4. Insurance agent	Director of Insurance (73 Sec. 1065.59)

Requirements

1. "properly qualified to perform the duties of an insurance agent"
2. "intends to actively engage in the insurance business. . .and in good faith to carry on the business of insurance"
3. "of good business reputation and worthy of license"
4. Written examination "covering all of the kind or kinds of insurance or contracts which the license, if granted, will permit the applicant to solicit"
5. State resident
6. U.S. citizen or has filed declaration to become same
7. "qualified, competent and trustworthy"
8. Has not
   a. "wilfully violated any provision of the insurance law"
   b. "intentionally made a material misstatement in the application"
   c. "obtained or attempted to obtain a license by fraud or misrepresentation"
   d. "been guilty of fraudulent or dishonest practices"
   e. "misappropriated or converted to his own use or illegally withheld monies required to be held in a fiduciary capacity"
   f. "materially misrepresented the terms and conditions of policies or contracts of insurance which he seeks to sell or has sold"
   g. "participated in any adjustment fee paid by a policyholder for handling any claim unless the licensee can furnish evidence satisfactory to the Director that such participation was with the full knowledge and written consent of the policyholder"

9. When "an authorized company has requested issuance of such license"
(73 Sec. 1065.39, 1065.41, 1065.43, 1065.45, 1065.49)

License

5. Insurance broker

Issuer

Director of Insurance

Requirements

1. "properly qualified to perform the duties of an insurance. . .broker"
2. Same as No. 2 for insurance agent
3. Same as No. 3 for insurance agent
4. Same as No. 4 for insurance agent
5. Same as No. 5 for insurance agent
6. Statement by a licensed agent or broker that applicant will solicit only for him
7. "qualified, competent and trustworthy and is a bona fide full time employee"
(73 Sec. 1065.39, 1065.41, 1065.43, 1065.46, 1065.49)

License

6. Land Surveyor

Requirements

1. "not less than 5 references of whom one or more shall be Registered Land Surveyors having personal knowledge of his Land Surveying experience and who shall so certify"
2. At least 25
3. U.S. citizen
4. "of good moral character and temperate habits"
5. Graduated from approved high school or secondary school or approved equivalent
6. A total of 8 years experience in practice of land surveying at least 4 of which he "has been in responsible charge of Land Surveying operations under a Registered Land Surveyor"
   a. satisfactory completion each ¼ of total hours needed for bachelor's degree in civil engineering at accredited engineering college equals one year of experience; maximum of 3 years if degree in civil engineering not received
7. Exam "to determine his fitness to receive a certificate of registration as a Registered Land

Issuer

Department of Registration and Education, upon advice of the Examining Committee (133 Sec. 34, 36)

Issuer's Qualifications

1. Five persons
2. "of generally recognized ability and standing" as surveyors
3. "engaged in the legal practice of Land Surveying at the professional level for at least 10 years." (133 Sec. 36)

Surveyor"
   a. "may include both practical demonstrations and written and oral tests"
   b. knowledge "of the Statutes of the United States of America and of the State of Illinois relating to land surveys, the subdivision of land, practical surveying and of mathematics as applied to land surveying"
8. May be denied if:
   a. convicted of a felony "as shown by a certified copy of the record of conviction"
   b. convicted of "any crime, an essential element of which is dishonesty or fraud"
   c. there is "proof of [applicant's] certifying to any false or fraudulent certificate attached to a map or plan of survey"
   d. there is "proof of gross carelessness or incompetence in performing services"

(133 Sec. 37, 37.1, 38, 39, 45)

License

7. Real Estate Broker

Requirements

1. U.S. citizen
2. At least 21
3. Proof of "honesty, truthfulness and integrity"
4. Completion of 4 year course of study in approved high school or secondary school or equivalent as determined by departmental exam.
5. Statements from 2 registered real estate brokers of county in which applicant resides or has place of business or by 2 reputable persons certifying applicant is "truthful, honest and of good reputation" and recommending issuance of registration
6. Registered real estate salesman for at least 2 years prior to application – shall be waived if either:
   a. bachelor's degree from approved college or university or
   b. at least 96 classroom or correspondence school hours in subjects relating to real estate transactions in a school "reputable and in good standing. . ." and a registered real estate salesman at least one year prior to application
7. Exam "to determine the trustworthiness of the applicant, and his competency to transact the

Issuer

Department of Registration and Education, "upon the action and report in writing of the Examining Committee" (114½ Sec. 1)

Issuer's Qualifications

1. Five persons designated by department director
2. "resident and citizen" of state at least 6 years prior to appointment
3. "actively engaged" as real estate broker or salesman or both at least 10 years prior to appointment
4. Not affiliated, directly or indirectly, with any school mentioned in 6(b) above in Requirements
5. Director will give "due consideration to recommendations by members and organizations of the profession"

(114½ Sec. 3.06)

business of real estate broker or real estate salesman, as the case may be, in such a manner as to safeguard the interests of the public." – "good understanding" of the general purposes and "general legal effects" of deeds, mortgages, market prices, land contracts of sale, and leases – "clear understanding" of obligations between principal and agent and of appropriate state statutes
(114 ½ Sec. 3, 3.02)

License

8. Real Estate Salesman

Requirements

1. 1, 2, 3 & 4 as for real estate brokers
2. Statement by broker or employer in whose employ applicant desires to enter certifying applicant is "truthful, honest and of good reputation" and recommending issuance of registration certificate
3. Exam: same as for real estate broker
(114½ Sec. 3, 3.02)

Issuer

Dept. of Registration and Education "upon the action and report in writing of the Examining Committee" (114½ Sec. 1)

License

9. Funeral Director

Requirements

1. At least 21
2. U.S. citizen and resident of state
3. "of good moral character and temperate habits"
4. Successful completion of course of instruction at least 1 year long in approved professional school or college teaching "the practice of funeral directing"
5. Studied funeral directing in state for at least 2 years under a registered funeral director
6. "satisfactorily versed in approved health measures used by the practices" and is himself "adequately and properly protected against communicable diseases"
7. Exam to determine "fitness to receive a certificate of registration"
   a. both oral and written
   b. on academic subjects having "an obvious and meritorious relation to funeral directing," to include "the human relations skills

Issuer

Department of Registration & Education
111½ Sec. 73.3)

necessarily involved with funeral directing and transportation of deceased human bodies"
(111½ Sec. 73.4)

License

10. Physician and Surgeon

Requirements

1. 21 or over
2. "of good moral character"
3. U.S. citizen or declaration of intent to become one or, having made such declaration, filing of petition for naturlization within 30 days after becoming eligible to do so.
4. Stipulated minimum standards of preliminary and professional education
5. Exam
   (91 Sec. 4, 5, 8)

Issuer

Dept. of Registration and Education "upon the action and report in writing of the examining committee (91 Sec. 3, 16b-1)

Issuer's Qualifications

1. Committee appointed by director of dept.
2. Five reputable physicians" licensed to practice medicine and surgery in state and possessing degree of doctor of medicine
   – one must be a full-time professor in one of the clinical departments at University of Illinois College of Medicine
3. One "reputable licensed physician" possessing degree of doctor of osteopathy
4. One "reputable licensed physician" possessing degree of doctor of chiropractic
5. Due consideration will be given to recommendations by members of profession and by organizations (127 Sec. 60a)

FOOTNOTES

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[1] Remittance agent is "any person who holds himself out to the public as being engaged in, or who engages in accepting money for remittance to the State of Illinois or any of its instrumentalities or political subdivisions, or to any of their officials, for the payment of vehicle license or registration fees, or taxes; whether or not such person renders any other service in connection with the making of any such remittance or is engaged in any other endeavor. . ." 16½ Sec. 92

F. NEW YORK STATUTES

License

1. Licensed lenders

Requirements

1. In writing, under oath and in form prescribed by superintendent of banks
2. Investigation of "the financial responsibility, experience, character, and general fitness of the applicant." To ensure they "are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly and efficiently."
   (N.Y. BANK LAW Sec. 343, hereinafter cited by law and section.)

Issuer

Superintendent of Banks (BANK Sec. 343)

Issuers Qualifications

Appointed by governor, by and with consent of senate. (BANK Sec. 12)

License

2. Professional engineer

Requirements

1. At least 25
2. U.S. citizen or has legally declared intention of becoming one
3. "of good moral character"
4. Satisfactorily completed 4 year high school course or equivalent thereof.
5. Graduation from approved engineering school
6. Either
   a. 8 years practical experience in professional engineering work of a grade and character satisfying to the board. – each completed year of study = one year of experience

OR

   b. 12 years experience, if No. 5 not satisfied
7. Passed prescribed examinations
   a. Subjects and scope determined by board, subject to approval of Dept. of Education
   b. Exam of the National Council of Engineering examiners may be used in whole or part
8. No. 6 may be waived by board for applicants "who are possessed of long established and recognized standing in the engineering. . .profession, who have practiced lawfully for more than fifteen years."
   (EDUC. Sec. 7205)

Issuer

Board of Examiners of Professional Engineers and Land Surveyors (EDUC Sec. 7204)

Issuers Qualifications

1. 5 or more members determined and appointed by board of regents of the University of the State of New York, upon recommendation of commissioner of education.
2. All licensed professional engineers; at least 2 also licensed land surveyors
3. U.S. citizen
4. Resident of state
5. Engaged in practice of professional engineering or land surveying at least 10 years.
6. "in responsible charge of engineering work, or land surveying" at least 5 years. (EDUC Sec. 7204)

License

3. Land Surveyor

Requirements

1. More than 21
2. U.S. citizen or has legally declared intention of becoming one
3. "of good moral character"
4. Satisfactory completion of approved four year high school course or equivalent
5. Graduation from college of engineering or surveying or from approved college offering "formal surveying instruction."
6. Either
   - a. 4 years land surveying experience "of a grade and character satisfactory to the board." – each year of teaching surveying in accredited engineering or surveying curriculum = one year experience; maximum of four
   - ORb. 6 or more years practical experience – each complete year of study in approved school = ½ year experience; maximum 2 years experience
7. Exam, as in No. 7 for Professional Engineers (EDUC Sec. 7205)

Issuer

Board of Examiners of Professional Engineers and Land Surveyors (EDUC Sec. 7204)

License

4. Certified social worker

Requirements

1. At least 21
2. "of good moral character"
3. Resident of or employed in state
4. Either
   - a. Master's degree or equivalent upon completion of 2 year course of study or equivalent in approved graduate school of social work.

OR

   - b. (1) Bachelor's degree and 15 or more years of satisfactory full-time social work experience

OR

   - (2) One year professional education in approved graduate school of social work and 3 or more years experience

OR

   - (3) 2 years professional education in

Issuer

Department of Education upon recommendation of state Board of Examiners of Certified Social Workers. (EDUC Sec. 7703)

Issuers Qualifications

1. Seven members appointed by regents upon recommendation of Commissioner of Education.
2. U.S. citizen
3. State resident
4. Engaged in "practice of social work" at least 5 years
5. Certified by state as social worker (EDUC Sec. 7703)

approved graduate school of social work without receiving master's degree and 2 or more years experience
(EDUC Sec. 7705)

License

5. Pawnbroker

Requirements

"Satisfactory evidence of good character"
(GEN BUS. Sec. 41)

Issuer

Mayor of the city or licensing authority of local government body where business is to be carried on (GEN. BUS. Sec. 40)

License

6. Private Investigator

Requirements

1. Background history
2. Such further facts as required by Department of State to show "good character, competency and integrity. . ."
3. "regularly employed as a private investigator or shall have been a member of a United States government investigative service, a sheriff or member of a city police department of a rank or grade higher than that of patrolman, for a period not less than three years."
4. "approved. . . by not less than five reputable citizens of the community" in which applicant resides, transacts or proposes to transact business that personally known applicant at least 5 years prior to application, has read application and believes it true; applicant is "honest, of good character and competent," and not related to applicant by blood or marriage. – if out-of-state applicant, 5 people must be from community in which applicant resides
5. Cannot be a Senior Parole Officer in employ of Board of Parole
6. Further "inquiry and investigation. . .as the Secretary of State shall deem proper. . ."
(GEN. BUS. Sec. 72, 74)

Issuer

Department of State (GEN. BUS. Sec. 70, 73)

License

7. Insurance agent

Requirements

1. Written application on supplied form with information as prescribed by superintendent
2. Certificate by insurer or fraternal benefit society that will employ applicant that he is trustworthy and competent to act as an insurance agent and that will employ applicant if license granted
3. 18 or over if for life, accident or health insurance; 21 or over if for fire, marine, casualty, surety and other.
4. Written exam in area in which desired to be licensed
   (INS. Sec. 114)

Issuer

Superintendent of Insurance (INS. Sec. 113)

Issuers Qualifications

1. Appointed by governor, by and with advice and consent of senate
2. Not directly or indirectly interested in the business of any insurer, agent, broker, or adjuster whether as stockholder, director, officer, attorney, agent or employee (INS. Sec. 10)

License

8. Insurance broker

Requirements

1. Deemed by superintendent to be "trustworthy and competent to act as a broker in such a manner as to safeguard the interests of the insured."
2. 21 or over
3. Either
   a. Successful completion of approved course or courses covering principal branches of insurance business and requiring no less than 90 hours of classroom work or equivalent correspondence work
   Either
      (1) Given by approved degree-conferring college or university or
      (2) Given by Insurance Institute of New York or approved equivalent institution, if continuously in existence not less than 5 years prior to applicant's taking course
      OR
   b. Regularly employed by insurance company, agent or broker for periods aggregating not less than one year during 3 years immediately preceding application "in responsible insurance duties relating to the underwriting or adjusting of losses in" fire, marine, liability and workmen's compensation,

Issuer

Superintendent of Insurance (INS. Sec. 119) surety and/or fidelity insurance

NB: time in Armed Forces not to count as part of 3 years above.

4. Exam on principal branches of the insurance business (INS. Sec. 119)

License

9. Excess line broker

Issuer

Superintendent of Insurance (INS. Sec. 122)

Requirements

1. Insurance broker's license (No. 8 above)
2. Written application with information as prescribed by superintendent (INS. Sec. 122)

License

10. Insurance adjuster

Issuer

Superintendent of Insurance (INS. Sec. 122)

Requirements

1. "Trustworthy and competent to act as an adjuster in such manner as to safeguard the interests of the people of this state."
2. Written application with information prescribed by superintendent
3. Never convicted of felony "or any crime or offense involving fraudulent or dishonest practices" – unless executive pardon or certificate of good conduct by parole board
4. Cannot employ anyone convicted of felony or crime or offense involving fraudulent or dishonest practices
5. Application "approved" by not less than five "reputable citizens" of community in which applicant resides or transacts business
   a. Certify personally known applicant at least 5 years prior to application
   b. Read application and believes each statement true
   c. Applicant "is honest, or good character and competent"
   d. Not related or connected to applicant by blood or marriage
6. Exam
7. At superintendent's discretion, evidence that employed "for a period [the superintendent]... deems reasonable" by insurer or adjuster in performance of duties which give applicant "satisfactory preliminary training"

8. "No licensee shall in connection with the transaction of his business as an adjuster make any misrepresentation of facts or advise any person on questions of law."
(INS. Sec. 123)

License

11. Funeral director and undertaker

Requirements

1. U.S. Citizen
2. "of good moral character"
3. Completion of one year at an approved college course or equivalent of an approved curriculum
4. More than 21
5. Examination

(PUB. H. Sec. 3421, 3422)

Issuer

Commissioner of Health

Issuers Qualifications

1. Graduate of an "incorporated medical college"
2. Physician
3. At least 10 years experience in practice of his profession
4. "of skill and experience in public health duties and sanitary science"

(PUB. H. Sec. 203)

License

12. Real Estate Broker

Requirements

1. Over 21
2. U.S. citizen or has declared intention
3. No conviction of felony, unless executive pardon or certificate of good conduct from parole board
4. Form as prescribed by Department of State
5. Written exam
   - a. Fair knowledge of English language
   - b. Fair understanding of general purposes and "general legal effects" of deeds, mortgages, land contracts of sale, and leases
   - c. General and fair understanding of obligations between principal and agent and provision of applicable state statutes
   - d. Must satisfy department as to his "character and general intelligence"
6. Either
   - a. "Actively participated in the general real estate brokerage business" as licensed salesman under supervision of licensed broker not less than 2 years
   - b. Or equivalent experience in general real estate business at least two years
   - c. Or same as (a) for at least one year and 45 hours of approved real estate courses

(REAL PROP. Sec. 440-9, 441)

Issuer

Department of State (REAL PROP. Sec. 441)

Appendix II

License	Issuer
13. Real Estate Salesman	Dept. of State (REAL PROP. Sec. 441)

Requirements

1. Over 18
2. No conviction of felony, unless executive pardon or, certificate of good conduct from parole board.
3. Form as prescribed by Dept. of State
4. Written examination "that shall satisfy the department as to his character and general intelligence."

(REAL PROP. Sec. 440-9, 441)

Appendix III

RENDERING LEGAL SERVICES: WHAT DO LAWYERS DO?

A. Introduction

Although there is a large body of literature on "what lawyers do," very little has been written that breaks down a lawyer's job into separate activities and analyzes his professional behavior on that basis. Most of the existing literature falls into two parts: first, those articles which generally describe the functioning of an attorney and the nature of the practice in different organizational settings, such as corporate lawyer, prosecuting attorney, government attorney, etc.; and second, the cases and writings defining "unauthorized practice," which define what tasks can be done only by lawyers, i.e., what others cannot do.

To determine "what lawyers do" in terms of separate activities, further studies must be conducted. The results of these studies will be of crucial importance in drawing conclusions on what tasks can be assigned to paralegals and sublegals, and in determining the type of education these individuals will need.

B. Types of Professional Activity

In carrying out his duties, a lawyer engages in a variety of activities. Professors Johnstone and Hopson, in *Lawyers and Their Work* (1967), suggest several categories of activities. A similar, but not identical list of categories is given below:

Counseling: involves pointing out legal problems to clients, including possible future problems, and suggesting courses of action. Since most laymen are unsure what is or is not a *legal* problem, interviewing and counseling presuppose the ability to pick legal problems out of a client's conversation and to focus attention on them.

Negotiating: since most legal disputes do not reach trial, this includes a variety of negotiating situations – representing a client in civil negotiations, plea bargaining with district attorneys in criminal cases or negotiating with attorneys or laymen about insurance claims, labor disputes and the like.

Persuading: includes not only persuading juries, judges, legislators, and those with whom the attorney negotiates, but also may involve convincing his client to do or not do certain things.

Researching - learning: includes legal research necessary to prepare cases, arguments and documents, and also may mean learning about situations or points of law which may affect a client.

Recording-drafting: writing letters, gathering and organizing facts for documents, preparing those requisite legal documents (which involves, in many instances, understanding and using the proper form) and filing them.

Organizing: involves several types of organizational skills – the organization of a law office, and the organization of clients for effective action.

Planning: requires forseeing and preparing for clients' future legal needs. Good preventive law and comprehensive planning forestall later legal complications.

Translating: requires the lawyer to express complex legal language and concepts to clients in laymen's terms.

Analyzing: the lawyer's ability to pick out the crucial points and problems in complicated legal arguments and situations. He must then logically examine the point or problem at issue, making conclusions based on his analysis. Synthesis of persuasive arguments and documents follows this process.

Managing-administering: requires the lawyer to direct and supervise an office staff and, in some cases, other attorneys, effectively. Increased use of sublegals would create more need for this ability.

Investigating-fact gathering: involves the investigating, interviewing and other fact-finding necessary to prepare cases and documents. Resembles research, but deals more with people and physical settings than with documents.

Implicit in this suggested list is the assumption that these are lawyerly skills as well as activities, and that each ***activity-skill*** requires some amount of substantive legal knowledge, depending on the problem involved.

A single problem may require a combination of several or all of these activity-skills for resolution. It is suggested here that these activity-skills can be studied separately. For example, in a negligence action, a lawyer counsels, investigates, researches, plans, etc., and if the matter is settled out of court he must negotiate and persuade. Each of these activities demands a certain degree of skill and a knowledge of substantive law. The investigating-fact gathering activity in an automobile accident, for example, may require the investigator to know the rules of evidence and the theories of liability so that he will be able to determine what to investigate and later decide on the relevance of his findings to the case.

As previously pointed out, there is little literature that deals with "what lawyers do" in this manner. However, some studies do suggest this type of analysis. For example, in the unauthorized practice area, many of the cases decide that an activity is or is not unauthorized practice because it demands a certain degree of skill and substantive legal knowledge. If the skill and knowledge required for the activity is thought to require the capability and scholarly attainment of an attorney, it is unauthorized practice for a non-lawyer to engage in the activity.

C. Organizational Setting

Lawyers' services are rendered in many different organizational settings. The following is a list of the more traditional of these settings:

- Solo practitioners
- Law firms
    - Partners
    - Associates
- Corporations
    - House counsel
    - Legal departments
- Government
    - Prosecuting attorneys
        - District attorneys
        - Attorney generals
    - Public defenders
    - Ombudsmen
    - Administrative agencies
    - Legal aid attorneys
    - Judges
    - Arbitrators
    - Lobbyists
    - Legislators
    - Legislative aides
    - County attorneys
- Allied fields
    - Law teachers
    - Law librarians
    - Law editors and publishers

It is evident that the organizational setting has a great deal of influence on the activity-skills in which a lawyer may become involved. The solo practitioner might be involved in all of the activity-skills, while the junior associate in a large law firm might be involved in only a few (e.g. researching/learning and recording/drafting). The type of organization, its size, and the degree of specialization would all be influential factors in determining what activity-skills were necessary for any particular position.

D. A Plea for Further Study

If we had the benefit of a study on "what lawyers do" based upon the activity-skill breakdown suggested, the determination of what non-lawyers could do would be much easier. By categorizing a lawyer's activity-skills and then studying each legal position in a particular organizational setting according to these activity-skills, we could determine what degree of expertise was necessary to perform each task. This in turn would aid us in determining what tasks presently being performed by attorneys could be performed by paralegals or sublegals and would also indicate what type of training these individuals would need.

We would hope that such a study could be conducted as soon as possible.

E. Bibliography

The following bibliography includes some important books and articles on lawyers and their profession. By no means exhaustive, it does present some representative sources in the general areas of the legal profession in general, lawyers in private practice and lawyers in government and public service, including legal services to the poor. The sources are not presented in subdivisions, because many books and articles might be included in several categories, whether by activity-skills, or the more general areas named above.

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Appendix IV

UNAUTHORIZED PRACTICE CONTROVERSIES

The following list represents legal practices being handled by non-lawyer individuals or groups that have often been attacked by the unauthorized practice committees. Some of these jobs, such as the drafting of wills, trusts, deeds, etc., have been handled by many types of organizations. To avoid repetition, these jobs are placed under one heading, and are not listed under many specific headings. Because of jurisdictional differences, treaties and the passage of time, some of these practices are not unauthorized practice, some are. This list attempts only to give an indication of the practices about which there has been substantial controversy requiring litigation or negotiated agreements.

The list was compiled from the following sources:

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A. Practice of Law in General

- General Corporations
    - Drafting corporate charters, bylaws, minutes
    - Consolidating or dissolving corporations
    - Applying for increase or decrease of capital stock or other corporate securities
- Credit Association
    - Suggesting name of attorney to handle bankruptcy proceedings
    - Collecting dividends on proven and allowed claims
    - Services offered
        - presenting proof of claim in bankruptcy proceedings
        - participating in election of trustee
        - furnishing approved forms
        - exercising power of attorney

- notifying firms or corporations of creditors filing bankruptcy

Motorists' Association
- Maintaining collection agency
- Offering legal services
- Handling motorists' claims and adjustments
- Furnishing accident insurance
- Paying for legal assistance
- Furnishing list of attorneys to engage

Life Insurance
- Preparing legal documents (see Drafting Instruments in General)
- Transferring property in estate planning
- Settling claims
- Transferring of beneficiary
- Interpreting specimen policy
- Making peaceful collection or adjustment of bill

Collection Agency
- Collecting past due accounts and adjusting bills
- Conducting routine correspondence
- Attaching debtor's wages (garnishment)
- Preparing pleadings and other documents
- Compromising debts
- Buying choses in action
- Arbitrating claims
- Conducting proceedings for collection
- Assigning of claims and judgments
- Acting as debt pooler

Claims Adjusting
- Negotiating
- Reporting facts
- Adjusting
- Settling
- Investigating
- Interviewing witnesses
- Appraising damages
- Determining liability
- Drafting release forms
- Soliciting prospective claims

Publishers
- All legal publications must inform public not to use book or forms therein as legal counsel.

Law Clerks
- Researching
- Investigating details
- Assembling data

- Processing uncontested probate cases
- Giving opinions on abstract of title
- Preparing general legal documents

Wills and Probate
- Searching for lost heirs
- Drafting wills and codicils
- Drafting probate documents

B. Drafting Instruments in General

General documents, including:
- Contracts
- Pleadings
- Probate papers
- Deeds
- Mortgages
- Bills of sale
- Leases
- Wills
- Bonds
- Warrants
- Affidavits
- Promissory notes
- Statements of claim
- Writs of replevin
- Garnishments
- Releases
- Compromises of claims
- Trusts
- Praecipes

C. Administrative Practice

Unemployment Compensation Commission
- Initiating claims
- Filing notices of appeal
- Applying for benefits
- Representing claimant by appearance
- Giving notices to employers
- Providing proofs of injury or death, medical attendance, employment and wage earnings

Workmen's Compensation Hearings
- Evaluating

    - Negotiating
    - Applying (claimants)
    - Applying for rehearing
    - Appealing to court from regional board of review
    - Representing clients in audit and claims procedure
- Public Utilities Commission
    - Representing clients in legislative or nonjudicial actions
- Industrial Commission
- Public Service Commission
- Liquor Control Board
    - Applying for issuance of liquor license
    - Applying for renewal of liquor license
- Railway Commission
    - Preparing and filing pleadings
    - Examining and cross-examining witnesses
- National Labor Relations Board
- Interstate Commerce Commission
    - Preparing leases, contracts
    - Advising clients on impact of federal law and regulations on claim
- Adoption Agency
    - Placing children for adoption
    - Conducting social investigation prior to petition for adoption
    - Notifying natural parents of legal consequences prior to release
    - Preparing adoption documents
- Adult Protective Services
    - Representing clients to secure benefits from public assistance programs
    - Representing clients at incompetency and hospitalization proceedings

D. Labor Relations

- Adjusting nonlegal issues and controversies
- Representing clients in collective bargaining
- Publishing magazine furnishing legal information
- Representing clients before National Labor Relations Board

E. Banks and Trust Companies

- Preparing death tax waivers
- Preparing tax returns
- Estate planning and analysis
- Trusts
    - Preparing:
        - *inter vivos* trusts
        - testamentary trusts

- wills
- probate documents
- inventories

Serving as:

- trustee
- executor
- guardian
- administrator
- agent
- fiduciary

F. Title Guaranty Companies

- Drafting Instruments
    - Lien papers
    - Escrow (agreements and instructions)
    - Trust indentures and agreements
    - Revocable trust agreement
    - Bill of sale
- Certificates of Title Insurance
    - Searching title records
    - Abstracting title
    - Examining title
    - Insuring
    - Doing curative work
- Estate planning and analysis
- Representing clients in insolvency proceedings
- Placing mortgages

G. Real Estate

- Contract of Sale
    - Offering
    - Accepting
    - Drafting earnest money contract forms
    - Drafting receipts
- Conveyancing
    - Drafting deeds (warranty, quitclaim, trust)
    - Drafting mortgages (chattel, land releases)
    - Drafting promissory notes
    - Assigning (note, contract)
    - Accepting satisfaction
    - Drafting reservations or provisions to create estates for life or in

- remainder or any limited or conditional estates
- Drafting leases
- Drafting contracts, including:
  - insertions
  - deletions
  - riders
- Filing liens and releases
- Serving as escrow agent

H. Patents and Trademarks

- Patent attorney
  - Preparing patent applications and amendments
  - Advising as to patentability
  - Practicing before U.S. Patent Office
  - Rendering opinions relating to:
    - (1) infringement of patents
    - (2) enforcement of patent
    - (3) trademarks
- Preparing legal documents relating to patents
  - Applying for and amending letters patent
  - Advising as to infringement and interference

Appendix V

IMPLICATIONS OF SOCIAL TRENDS FOR LEGAL SPECIALTIES

INTRODUCTION

This appendix relates a variety of social trends or accomplishments that might be anticipated in the next 20 to 30 years to a number of specific areas of law. Some of these trends are considered in Sections IV and V. Most of the trends indicate the growth of legal services and, thus, the need for paralegal and sublegal occupations to perform some of those services. Some of the trends indicate decreased need, and they are also noted.

The areas of law are considered in the following order:

Corporations
Business Planning
Contracts
Labor Law
Income Tax
Securities
Trade Regulation
International Law
Government Contracts
Administrative Law
Municipal Government
Legislation
Property
Insurance, Negligence, and Torts
Evidence
Criminal Law
Domestic Relations
Wills
Bankruptcy and Creditor-Debtor Rights
Natural Resources
Water Rights
Social-Legal Research

Appendix V

CORPORATIONS

Trends for increase: new forms of nonprofit corporations, increased national product, increased communication, increased international trade, increased turnover in workers, increased government regulation, increased activity to influence the government, institutionalization of change, increased use of credit, diffusion of goods and services, increased hybrid government-business organizations (e.g. Rand Corporation).

BUSINESS PLANNING

Trends for increase: institutionalization of change, more variety of programs for employees due to pluralism, dealing with Negro city governments, increased variety of government subsidies for special projects, increase in housing and recreation businesses, increased foreign trade and increased competition with foreign competitors, increased civic service programs by business, increased pollution control, increased transportation business, competition with organized crime moving into business, planning for greater autonomy of managers' subordinates due to the specialization and competency of those subordinates, planning for retraining programs for those displaced by automation, planning for the influx of females into the work force, increase of service oriented businesses, dealing with consumer representation and protection, increasing research and development, increasing international trade and business association, credit society and collections, new kinds of theft (e.g., manipulation of computers), planning group legal services, increased fringe benefits for employees, increasing business in proprietary education, new field of university planning.

Trend for decrease: mergers and thus fewer large businesses, growth of public sector faster than business, shift to government controlled mass transit, shift of economy from production to services, possible decrease in labor law, better information available for tax planning, possible automated credit control, better communication techniques so that the educational function of the lawyer takes less time, better communication reducing travel time for business conferences.

CONTRACTS

Trends for increase: increased affluence, decreased informal and oral arrangements, increased public sector and government involvement requiring written contracts, specialization of occupations so that one must go many places to get a service completed.

Trends for Legal Specialties

LABOR LAW

Trends for increase: negotiation of union contracts recognizing automation, community unions, tenant unions, white collar unions, group legal services for unions, increased government regulation.

Trends for decrease: goal of full employment, decreasing blue collar employment, increasing professional and technical employment, increasing variety of political beliefs within unions, decreasing number of workers doing the same task, increased public sector employment with prohibition on strikes, increased trade and professional associations and decreasing unions.

INCOME TAX

Trends for increase: increase in wealth, distribution of wealth to include the disadvantaged, increased foreign participation in U.S. money-making, growth of the public sector, more women working.

Trends for decrease: automation of business records and tax returns.

SECURITIES

Trends for increase: increased government regulation of large companies, and their securities, government regulation of mutual funds, government-business hybrid companies with securities, increased income and national wealth, increased leisure time, increased consumer representation and protection, high life expectancy, need for securities to open even a small business.

Trends for decrease: concentration of economic power, increase of service and professional oriented partnerships and closely held corporations as opposed to production-oriented corporations, increase of non-profit corporations, increase of non-profit groups.

TRADE REGULATION

Trends for increase: better transportation for moving goods, social engineering and planning, increased foreign aid, government participation in industries (e.g., housing, transport), increased international and East-West trade.

INTERNATIONAL LAW

Trends for increase; increased internationalization, increased production and trade, better transportation, better communication, increased capital and labor force mobility, increased leisure time and travel, increased international education, increased foreign aid, multi-national problem oriented organizations, possible U.S. Common Market, East-West trade.

GOVERNMENT CONTRACTS

Trends for increase: increase in all sorts of government programs, growth of the public sector, income maintenance, increased foreign aid, increased government participation with other governments in large scale scientific research, national governments co-operating in dealing with special problems, increased government-business hybrid organizations.

ADMINISTRATIVE LAW

Trends for increase: increased procedural due process, increased public sector, social engineering in planning, increasing study before legislation, increasing political participation, increased voluntary government programs (e.g., Peace Corps), increased governmental interaction on specific problems with other governments, increased subsidies from the government to nonproductive people, increased new towns and urban renewal, new minority problems (e.g., Indians, Mexicans), increased due process in the military, increased rehabilitation in criminology, continuing shift of selected matters from courts to administrative agencies.

MUNICIPAL GOVERNMENT

Trends for increase: urbanization, suburbanization, extremely rapid growth of municipal government, conflict between suburbs and core city, new towns and urban renewal, municipal control of transportation, increase in community colleges and municipal education, increased criminality and police.

LEGISLATION

Trends for increase: need for greater staffs for legislators which can provide alternative plans to the executive branch, need to cope with increased political participation, need to oversee the growth of the public sector, new legislative organizations dealing with metropolitan or international problems.

PROPERTY

Trends for increase: mobility (15% new homes are mobile homes), two-house families, more ways of getting liens attached to land, complex new property arrangements (e.g., condominium), ownership by present renters.

Trends for decrease: larger farm units.

INSURANCE, NEGLIGENCE, AND TORTS

Trends for increase: increased mobility, increased urbanization, increased income with which to buy insurance, increased property to insure, increased variety of insurance plans, increased transportation of insured property, increased opportunity for disaster, insured group legal services (better representation), increased leisure and personal interaction, increased product liability.

Trends for decrease: safe mass transit, Keeton-O'Connell automobile tort plan, consumer protection possibly leading to safer consumer goods, innocuous means of over-indulging.

EVIDENCE

Trends for increase: more representation of young people (juvenile court), more representation of misdemeanor defendants, more crime, areas requiring changes in law through the courts, possible due process and evidence required in administrative agencies, increase in the business of those agencies.

Trends for decrease: courts growing moreslowlythan population, increased use of arbitration, administrative agency activity where evidence rules may not be required, Keeton-O'Connell type automobile insurance.

CRIMINAL LAW

Trends for increase: urbanization, more property to steal or destroy, increasing urban tension, early maturation of youth, flexible penology and probation, fractionalization or pluralism in the society.

Trends for decrease: possible drugs to affect criminals, equality of opportunity, better educational and propaganda techniques, non-harmful methods of over-indulging, better and increased surveillance (e.g., close-circuit TV), possible rehabilitation in prisons.

DOMESTIC RELATIONS

Trends for increase: increased opportunity to swap mates, more property, high life expectancy.

WILLS

Trends for increase: increased affluence, increased longevity (re-drafting of wills), increased savings, investments, and property.

Appendix V

BANKRUPTCY AND CREDITOR-DEBTOR RIGHTS

Trends for increase: increased pressure for consumption, increased credit and costs making unemployment disastrous, loans without collateral, better advertising techniques.

Trends for decrease: decreasing racism allowing non-whites to get better jobs, increased income and national wealth, increased female participation in labor force, day care centers to allow women to work, credit allowing more debt before bankruptcy is required, possible consumer protection in education, better information on a person's credit, possible computer controls against overdrawing an account.

NATURAL RESOURCES

Trends for increase: increased use of resources, dealing with ecological changes (e.g., smog), increased international use of resources, need for new exotic materials, satellite discovery, use of synthetics, increased recycling of resources, government desalinization of water, modification of weather providing more water.

WATER RIGHTS

Trends for increase: vastly increased use of water, possible weather modification, recycling of water, increased water pollution, increased recreational use of water, increased water diversion, desalinization of water, required pollution control devices.

SOCIAL-LEGAL RESEARCH

Trends for increase: increased sociological law teaching, increased availability of sociological information, increased need for sociological knowledge in policy determination by courts, increased long range business and government planning, systems analysis of legal business, systems analysis of policy decisions by the legislative and executive, study of social "deviants" and law.